

MEMORANDUM OF UNDERSTANDING (MOU) ON AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Delegations representing the Government of the Republic of Kenya (hereinafter referred to as The Kenya Delegation) and the Aeronautical Authority of the Socialist Republic of Viet Nam (hereinafter referred to as The Viet Nam Delegation) and hereinafter referred to collectively as "The Delegations" met in Ha Noi, Viet Nam on 6th and 7th August, 2014 for the purpose of negotiating a new Air Services Agreement and a Memorandum of Understanding.

The negotiations were held in a cordial and friendly atmosphere, characteristic of the good relations that exist between the Contracting Parties.

The list of both delegations is attached hereto as Appendix "A".

The following issues were discussed and agreed on as herein below:

1. BILATERAL AIR SERVICES AGREEMENT

Both delegations agreed to initial a new Air Services Agreement (the Agreement) attached as Appendix B.

Both delegations further agreed to recommend to their respective Governments the formal signing of the Agreement.

2. MEMORANDUM OF UNDERSTANDING

The following understanding was reached between the Delegations:

a) DESIGNATION

The Delegations agreed to adopt multi-designation of airlines from their respective countries.

b) FREQUENCY AND CAPACITY

The Delegations agreed that the capacity and frequencies to be applied on the agreed routes shall not be restricted.

c) ROUTE SCHEDULE

The Delegations agreed to adopt a liberal routes structure to be operated by the designated airlines as provided for in the Annex I to the Agreement.

d) TRAFFIC RIGHTS

Both delegations agreed that 3rd and 4th freedom traffic rights for passenger, combination and all-cargo services will continue to be freely exchanged in accordance with the provisions of the Agreement.

The delegations further agreed that, exercise of the fifth freedom traffic rights will be subject to agreement by the two aeronautical authorities.

e) CODE-SHARE ARRANGEMENTS

Both delegations agreed that designated airlines can code share with airlines of either Contracting Party. Further, designated airlines are free to code share with airlines of Third Party States as long as the third Party airlines have the underlying traffic rights on routes in question.

f) AVOIDANCE OF DOUBLE TAXATION

The Delegations agreed to urge their competent authorities to conclude an agreement for avoidance of double taxation on revenues, capital and profits arising from their respective airlines activities and income in the territory of the other Contracting Party.

g) CO-TERMINATION

The two delegations agreed that the designated airlines are free to combine points in the territory of either contracting party without cabotage.

3. ENTRY INTO FORCE OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall come into force upon signature.

Done at Ha Noi on 7th August 2014.

For the Government of The Republic
of Kenya



Mr. Benjamin Kiguhi Enyenze

For the Aeronautical Authority of
the Socialist Republic of Viet Nam



Mr. Vo Huy Cuong

LIST OF KENYAN DELEGATION

1. Chairman
Mr. Enyenze Benjamin Kiguhi
Senior Air Transport Officer
Ministry of Transport and Infrastructure
2. Members
Ms. Chesoni Joan Magonjo
State Counsel
State Law Office
3.
Mr. Owiti Peter Opiyo
Charge d'Affaire a.i
Kenya Embassy, Bangkok, Thailand
4.
Mr. Kimemia Joram Michael Kageto
Legal Counsel
Ministry of Foreign Affairs and International Trade
5.
Mr. Wanje Ezekiel Mwamure
Air Transport Officer
Kenya Civil Aviation Authority
6.
Mr. Kamau George Karuthui
Legal Officer
Kenya Airports Authority
7.
Mr. Mwangi Isaac Gitonga
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LIST OF VIETNAMESE DELEGATION

1. Chairman Mr. Vo Huy Cuong
Deputy Director General
Civil Aviation Authority of Viet Nam (CAAV)
2. Members Mr. Ngo Thanh Phuong
Deputy Director
Legal Affairs and International Cooperation Department, CAAV
3. Mr. Vu Hong Quang
Deputy Director
Air Transport Department, CAAV
4. Mrs. Le Thi Thu Ha
Official
Air Transport Department, CAAV
5. Mr. Nguyen Duc Lam
Official,
Legal Affairs and International Cooperation Department, CAAV
6. Mr. Nguyen Tien Hoang
Deputy General Manager
Vietnam Airlines

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**Air Services Agreement
between
the Government of the Republic of Kenya
and
the Government of the Socialist Republic of Viet Nam**

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Air Services Agreement

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Preamble

The Government of the Republic of Kenya and the Government of the Socialist Republic of Viet Nam (hereinafter, "the Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:



Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of Republic of Kenya the Minister/Cabinet Secretary in charge of aviation; in the case of the Government of the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam, Ministry of Transport ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- g) "ICAO" means the International Civil Aviation Organization;
- h) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- i) "Contracting Party" is a State which has formally agreed to be bound by this agreement;
- j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- k) "territory" in relation to a State means the land areas, and in the case of the Socialist Republic of Viet Nam, it includes mainland and islands, and under sovereignty of a Contracting Party, internal waters and territorial seas, and the airspace above the said areas;
- l) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and
- m) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

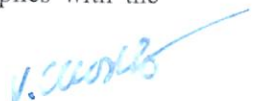



Article 2 Grant of rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Contracting Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Contracting Party;
 - b) the right to make stops in the territory of the other Contracting Party for non-traffic purposes; and
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail separately or in combination.
3. The airlines of each Contracting Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Contracting Party.

Article 3 Designation and authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airline(s) to operate the agreed services in accordance with this Agreement.
2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Contracting Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:
 - a) substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
 - b) the Contracting Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
 - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.
3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.



Article 4
Withholding, revocation and limitation of authorization

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

- a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
- b) in the event of failure of the Contracting Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
- c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 Consultations, of this Agreement.

Article 5
Application of laws

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Article 6
Direct transit

Passengers, baggage, and cargo in direct transit through the territory of any Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.



Article 7 Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Contracting Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

Article 8 Safety

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Contracting Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Contracting Party shall then take appropriate corrective action within an agreed time period. Failure by the other Contracting Party to take appropriate action within the said period or such longer period as may be agreed shall be grounds for the application of Article 4 of this Agreement to revoke or suspend operating authorisation
3. . Notwithstanding the obligation mentioned in Article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the airline of one Contracting Party on services to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its flight crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections gives rise to:
 - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
 - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention:
 the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licenses in respect of

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that aircraft or in respect of the flight crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of air aircraft operated by an airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

8. With reference to paragraph 2, if it is determined that one Contracting Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

Article 9

Aviation security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Contracting Parties adhere to.

2. The Contracting Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.

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4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Contracting Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Contracting Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Contracting Party may take interim action at any time.

Article 10

User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Contracting Party shall encourage the competent charging authorities to provide users with

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reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 21 Settlement of Disputes, to be in breach of a provision of this Article, unless:

- a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or
- b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Contracting Party shall be available for use by the airlines of the other Contracting Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

Article 11

Duties, Taxes and Fees

1. Each Contracting Party shall on the basis of reciprocity exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

- a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

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Article 12 **Fair competition**

1. Each Contracting Party agrees:
 - a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and
 - b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Contracting Party.
2. Each Contracting Party shall allow each designated airline(s) to determine the frequency and capacity of the international air service it offers, as well as the traffic demand for the air services, based on commercial considerations of the marketplace.
3. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons, consistent with Article 15 of the Convention.
4. Neither Contracting Party shall require the filing of programmes for non-scheduled flights, or operational plans by the designated airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (2) of this Article. If a Contracting Party requires filing for information purposes, it shall minimise the administrative burdens of such filing requirements and procedures on air transport intermediaries and on designated airlines of the other Contracting Party.

Article 13 **Establishment of Tariffs**

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
 - a) Prevention of unreasonably discriminatory prices or practices;
 - b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
 - c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;

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d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority

a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and

b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.

5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

Article 14

Currency conversion and remittance of earnings

Each Contracting Party shall permit airline(s) of the other Contracting Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance, according to the foreign exchange regulations of the Contracting Party concerned.

Article 15

Sale and marketing of air service products

1. Each Contracting Party shall accord airlines of the other Contracting Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services, and any person shall have the right to purchase such transportation, in the currency of that territory, or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.



Article 16 Codesharing/Cooperative arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:

- a) an airline or airlines of either Contracting Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Contracting Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Contracting Parties at least 30 days before its proposed introduction.

Article 17 Environmental Protection

The Contracting Parties support the need to protect the environment by promoting the sustainable development of aviation. The Contracting Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

Article 18 Statistics

The aeronautical authorities of each Contracting Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Contracting Party.

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Article 19 **Approval of schedules**

1. The designated airline of each Contracting Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Contracting Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Contracting Party.

Article 20 **Consultations**

In the spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Contracting Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.

Article 21 **Settlement of disputes**

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.



6. Either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting Party in default hereof.

Article 22 Amendment

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an exchange of diplomatic notes.

Article 23 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

Article 24 Termination

Either Contracting Party may, at any time, give notice in writing, through diplomatic channels, to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, or any shorter period of time as may be agreed by both Contracting Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

Article 25 Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

Article 26 Entry into force

This Agreement shall be applied provisionally from the date of its signature and shall enter into force on the day the last written notification is received by diplomatic note confirming that the Contracting Parties have fulfilled all respective internal procedures required for the entry into force of this Agreement.

In the witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at..., this ... Day of ... in the year ... in duplicate original copies in English and Vietnamese languages, both texts being equally authentic.

For the Government of the
Republic of Kenya

For the Government of
the Socialist Republic of Viet Nam



Annex I Route schedules

- A. The Designated Airline(s) of the Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Kenya	Any Points	Points in Viet Nam	Any Points

- B. The Designated Airline(s) of the Socialist Republic of Viet Nam shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Viet Nam	Any Points	Points in Kenya	Any Points

Note:

1. Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights, provided that any service either begins or terminates in the territory of the Contracting Party designating the airline.
2. The right of the designated airlines of either Contracting Party to transport passengers, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of Third Parties shall be discussed and agreed upon by the aeronautical authorities of the two Contracting Parties.

V.A.M.

V. ...

PARLIAMENTARY PAPER ON THE RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

1.0 Background Information

The Ministry of Transport and Infrastructure takes the lead in negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Agreements are negotiated in line with the Integrated National Transport Policy, which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and on the basis of equal opportunity and reciprocity for other States.

The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services the Agreements provide for them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is normal practice for the delegations representing the concerned States to sign a Memorandum of Understanding

(MoU) that gives force to the Agreement as it awaits the signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require for the signing of the Agreement prior to entry into force.

2.0 Analysis of the Issue

The Bilateral Air Services Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014. In order to operationalize the Agreement, delegations from the two states signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

The Agreement is modeled on the ICAO template and based on equal opportunities and reciprocity. The Agreement is liberal and aimed at enabling designated airlines of either State to operate scheduled air services between their territories without any restrictions. It provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of 5th Freedom Traffic Rights, is subjected to agreement by the two aeronautical authorities.

2.1 Kenya/Viet Nam Blateral Air Services Agreement

The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014 in Ha Noi, Viet Nam (copy attached). Delegations representing the two States signed an MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement.

Kenya Airways plans to commence daily scheduled flights to Ha Noi, Viet Nam effective from 30th March, 2015 and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights to points into China from Viet Nam. Currently, there is no Viet Nameese airline operating scheduled flights into Kenya. We believe that the signing of the Agreement will give impetus to Kenya Airways to increase additional frequencies and enable Viet Nameese airlines to start operating on the sector for fair competition.

3.0 Way forward

The National Assembly grants approval for the ratification of the Air Services Agreement between Kenya and Viet Nam to enable submission of the Agreements to Parliament and finalization of the ratification process. This will enable the signing of the Air Services Agreement between Kenya and Viet Nam.

KENYA/VIETNAM BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants the first, second, third and fourth freedoms of the air on a reciprocal basis to each of the Contracting Parties.
Article 3	Designation and Authorization	The Article provides for multiple designation of airlines of both the Contracting Parties. Designation is liberal.
Article 4	Withholding, revocation and limitation of authorization	The Article provides for the right to withhold the authority to operate or revoke the certificate(s) if an airline does not meet the minimum set standards.
Article 5	Application of Laws	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 6	Direct Transit	The Article reaffirms that passengers, baggage and cargo on transit shall not be screened if they don't leave their designated area at airport. However, screening can be done for aviation security, narcotics control, prevention of illegal entry or in special circumstances.
Article 7	Recognition of Certificates	Parties reaffirm to recognize Certificates of airworthiness, certificates of competency and licenses issued by the other Contracting Party and are still valid. The certificates must be equal or above the ICAO set standards.
Article 8	Aviation Safety	The Article provides for the procedure to be followed when safety standards being maintained by the other Party relating to aviation facilities, aircrew, aircraft and the operation of aircraft are inadequate. The Article is based on ICAO Annex 19.
Article 9	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 10	User Charges	The Article provides for user charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 11	Duties, Taxes and Fees	The Article grants on reciprocal basis exemption from custom duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board aircraft and being used on flight. Inspection fees and other similar charges are also exempted.
Article 12	Fair Competition	The parties reaffirm to ensures fair and equal opportunity for the designated airlines to compete in providing international air transportation governed by the Agreement.
Article 13	Establishment of Tariffs	The Article provides for designated airlines to establish tariffs based on commercial considerations in the market place such as cost of operation, characteristics of the service, interests of the users, reasonable profit and other market considerations.
Article 14	Currency Conversion and remittance of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Sale and marketing of air service product	The Article provides for the right to sell and market international air services and related products in its territory directly or through agents, and right to establish offices.
Article 16	Codesharing/Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 17	Environmental Protection	The Parties reaffirm to comply with ICAO standards and Recommended practices of Annex 16 and existing ICAO policy and guidelines on environmental protection with regard to aviation activities. (noise and carbon monoxide)
Article 18	Statistics	Parties reaffirm to supply at the request of the aeronautical authorities of the other Party, statements or statistics of passengers, cargo and

		mail for purpose of reviewing operations of designated airlines.
Article 19	Approval of schedules	The Article provides for submission of flight schedules of designated airlines to the aeronautical authorities of other Contracting Party for their approval at least 30 days prior to the operation of agreed services.
Article 20	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. A Party may request for high level meeting up to Ministerial level or escalate the consultations higher if deemed necessary.
Article 21	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 22	Amendment	The Article provides for the procedure of making amendments to the Agreement. Amendments agreed by the Contracting Parties come into effect when confirmed by an exchange of diplomatic Notes.
Article 23	Multilateral Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 24	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period the termination takes to be effective.
Article 25	Registration with ICAO	In the Article the Parties reaffirm for registration of the Agreement and its amendments with the International Civil Aviation Organization (ICAO) upon signature. ICAO is the repository.
Article 26	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.



COPIES



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Ref No. **MFA. AU 16/49**

6th March, 2015

Mr. Justin Bundi

Clerk to the National Assembly
Parliament Buildings
Nairobi.

Mr. J. M. Nyegenye

Clerk of the Senate
Parliament Buildings
Nairobi.

Dear *Clerk*

**RE: RATIFICATION OF THE PROTOCOL TO THE CONSTITUTIVE ACT OF THE
AFRICAN UNION RELATING TO THE PAN-AFRICAN PARLIAMENT**

Reference is made to the new Protocol relating to the Pan African Parliament (PAP) that was adopted during the 23rd Ordinary Session of the African Union Assembly that was held in Malabo, Equatorial Guinea in June, 2014 (*copy attached*). It is expected that the Protocol shall enter into force after receipt of the 28th instrument of ratification.

You may be aware that H.E. the President has accepted to be the Special Guest of Honour at the Pan African Parliament's 10th Anniversary celebrations which are set for 18th May, 2015 in Midrand, South Africa. It may therefore augur well with the President's vision of Pan-Africanism and Africa Renaissance to have Kenya as the first African country to ratify the new Protocol of the PAP and to actually announce it during the occasion.

This is therefore to request that you consider initiating the ratification process of this Protocol.

Yours *Sincerely*,

DR (ENG) KARANJA KIBICHO, CBS
PRINCIPAL SECRETARY

Encl.

underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of African States.

Article 27
Transitional Provision

1. The present Protocol shall upon entry into force replace the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan African Parliament.
2. The term of office of Member of the Parliament shall terminate within a period not exceeding one year of the entry into force of this Protocol.

**ADOPTED BY THE TWENTY-THIRD ORDINARY SESSION OF
THE ASSEMBLY, HELD IN MALABO, EQUATORIAL GUINEA**

27TH JUNE 2014

Article 24 Accession

1. A Member State shall accede to this Protocol, after its entry into force, by depositing its instrument of accession with the Chairperson of the Commission. The Chairperson of the Commission shall, upon receipt of such instrument of accession, notify all Member States.
2. For any Member State acceding to this Protocol, the Protocol shall come into force on the date of the deposit of its instrument of accession.

Article 25 Amendment or Revision of the Protocol

1. This Protocol may be amended or revised by a decision of a two-thirds majority of the Assembly.
2. A Member State party to this Protocol or the Pan African Parliament may propose, in writing to the Chairperson of the Commission any amendment or revision of the Protocol.
3. The Chairperson of the Commission shall notify the proposal to all Member States at least thirty (30) days before the meeting of the Assembly, which is to consider the proposal.
4. Save where the proposal originates from the Pan African Parliament, the Chairperson of the Commission shall request the opinion of the Pan African Parliament on the proposal and shall transmit the opinion, if any, to the Assembly, which may approve the proposal, taking into account the opinion of the Pan African Parliament.
5. The amendment or revision shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson by a simple majority of Member States.

Article 26 Review of the Protocol

Conferences to review the operation and effectiveness of the Protocol, the legislative mandate and the system of representation to the Pan African Parliament, may be organized by the States Parties at intervals of ten (10) years, or within such shorter time as the Pan African Parliament may decide with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision

2. The Pan African Parliament shall periodically submit a report in writing on its work to the National Parliaments or other deliberative bodies for information. Copies of such reports shall also be submitted to the Ministers with responsibility for foreign affairs, African Union affairs and/ or regional integration.

Article 20
Relations between the Pan African Parliament and
other organs of the AU

1. The Chairperson of the Assembly shall deliver a speech on the state of the AU at each inaugural Session of a new term of the Pan African Parliament.
2. The Chairperson of the Commission shall, at least once during the term of each Parliament, present the Activity Report of the Commission to the Pan African Parliament.
3. The other organs of the AU, except the Assembly, the Council and the Court, shall forward their activity reports annually to the Pan African Parliament by the third month of each succeeding year.
4. The Pan African Parliament shall forward its annual Activity Report to the different organs of the AU, at the latest, by the third month of each succeeding year.

Article 21
Interpretation

The Court shall have jurisdiction on all questions of interpretation of this Protocol.

Article 22
Signature and Ratification

1. This Protocol shall be signed and ratified by Member States in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 23
Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson of the Commission by a simple majority of the Member States.

Article 16
Budget of the Pan African Parliament

1. The annual budget of the Pan African Parliament shall constitute an integral part of the regular budget of the AU.
2. The budget shall be drawn up by the Pan African Parliament and submitted to the relevant AU policy organs for approval, in accordance with the AU Financial Rules and Regulations.
3. The financial year of the Pan African Parliament shall be the same as that of the AU.

Article 17
Seat of the Pan-African Parliament

1. The seat of the Pan African Parliament shall be located in the Republic of South Africa.
2. The Pan African Parliament may convene in the territory of any Member State at the invitation of that Member State.

Article 18
Official and Working Languages

The official and working languages of the Pan African Parliament shall be those of the AU.

Article 19
Relations between the Pan African Parliament, the Parliaments of Regional Economic Communities and National Parliaments or other Deliberative Bodies

1. The Pan African Parliament shall work in close co-operation with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body. To this effect, the Pan African Parliament may, in accordance with its Rules of Procedure, convene annual consultative fora with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body to discuss matters of common interest.

Article 14 Oath of Office

At its sitting following the election and before transacting any other business, the Parliamentarians shall take an Oath or make a Solemn Declaration. The text of the Oath or Declaration shall be set out as an addendum to the Rules of Procedure.

Article 15 Sessions and Quorum

1. The inaugural session of the Pan African Parliament shall be convened by the Secretary General;
2. The Pan African Parliament shall meet in ordinary session at least twice a year, within a period to be determined in the Rules of Procedure. Each ordinary session may last up to one (1) month.
3. The Bureau, the Assembly, the Council or at least two-thirds of the Pan-African Parliamentarians may, by written notification addressed to the President, request an extraordinary session, subject to the following: -
 - a) The request shall provide the reasons for and details of the matters to be discussed at the proposed extraordinary session.
 - b) The President shall convene such a session within such time as provided for in the Rules of Procedure.
 - c) The session shall discuss only those matters stipulated in the request.
 - d) The session shall end upon exhaustion of the agenda.
 - e) In any case, the duration of an extraordinary session shall not exceed ten (10) days.
4. The proceedings of the Pan African Parliament shall be open to the public, unless otherwise directed by the Bureau.
5.
 - (a) The quorum for a meeting of the Pan African Parliament shall be determined by the Rules of Procedure.
 - (b) The Rules of Procedure may differentiate between the quorum necessary for the conducting ordinary business by the Pan African Parliament and the quorum needed for making valid decisions.

Article 13
The Secretary-General of the Pan African Parliament

1. The Pan African Parliament shall, on the recommendation of the Bureau, appoint a Secretary General and two Deputy Secretaries General in accordance with the AU Staff Rules and Regulations.
 2. The Secretary General shall appoint, after consultation with the Bureau, such other staff as may be necessary for the proper functioning of the Pan African Parliament, in accordance with the AU Staff Rules and Regulations.
 3. The Secretary General and a Deputy Secretary General shall be a person of proven experience or expertise in parliamentary practice, management and financial administration, and a demonstrated interest and understanding of the process of integration in Africa.
 4. The Secretary General shall be the head of the Secretariat, and shall be responsible for the day to day management and administration of the affairs and property of the Pan African Parliament. He/ she shall be accountable to the Parliament through the Bureau.
 5. The Secretary General shall be the Accounting Officer of the Parliament.
 6. The Secretary General shall, as soon as practicable, cause to be transmitted to the Secretaries General/Clerks of the National Parliaments or other deliberative body and the Parliaments of the Regional Economic Communities copies of the records of all the relevant debates at the sessions and committee hearings of the Pan African Parliament for information.
 7. The Deputy Secretaries General shall assist the Secretary General in the discharge of his/her duties.
-
8. The Secretary General shall ensure that proper books of account are kept for the Pan African Parliament; the Secretary General shall submit annually a report on the utilization of the funds available to the Pan African Parliament including its budgetary allocation through the Bureau to the Council in accordance with the AU Financial Rules and Regulations.
 9. The Secretary General and the Deputy Secretaries General shall before assuming office take an Oath or make a Solemn Declaration before the Pan African Parliament.

(100)

4. The functions of the President and the Vice-Presidents shall be defined in the Rules of Procedure.
5. The term of office of the President and the Vice-Presidents of the Bureau shall be two (2) and a half years renewable once.
6. The President shall preside over all parliamentary proceedings except those held in committees and, in his or her absence, the Vice-Presidents shall act in rotation, in accordance with the Rules of Procedure.
7. The Vice-Presidents shall be ranked in the order of First, Second, Third and Fourth Vice-President, in accordance with the result of the vote. In the absence of the President, each Vice President shall stand in for the President in rotation.
8. The offices of the President and Vice-President shall become vacant if the holder:
 - a) dies;
 - b) resigns in writing to the Bureau;
 - c) is unable to perform his or her functions for reasons of physical or mental incapacity;
 - d) is removed on grounds of misconduct;
 - e) loses his/her membership of the Pan African Parliament or when his or her term of office expires.
9. Removal on the grounds stipulated in paragraph 8 (c) or 8 (d) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of removal on the grounds stipulated in 8(c), the motion shall, in addition, be supported by a medical report.
10. In case of a vacancy in the Bureau, a Member of the Pan African Parliament shall be elected in his/her place to complete his/her term, through an election at the sitting of the Pan African Parliament immediately following its occurrence.
11. The President may, with the approval of the Bureau, invite any person to a session of the Pan African Parliament, if in the opinion of the Bureau the business to be transacted at that session renders the presence of that person desirable.

African Parliament in his or her capacity as a Pan African Parliamentarian in the discharge of his or her duties.

3. Without prejudice to paragraph 2 of this Article, the Pan African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

Article 10 Allowances

1. The Pan-African Parliamentarians shall be paid allowances by their respective State Parties.
2. The allowances for the President, Vice Presidents and other officials of Committees shall be the responsibility of the respective States Parties.

Article 11 Rules of Procedure

1. The Parliament may adopt and amend its own Rules of Procedure including the procedures for giving effect to its mandate under Article 8 of this Protocol, by a two-thirds majority of all its members.
2. In developing its Rules of Procedure, the Parliament shall ensure consistency of these Rules with AU rules and regulations.

Article 12 The Bureau of the Pan African Parliament

1. There shall be a Bureau of the Pan African Parliament which shall be elected on a rotational basis among the five (5) regions of the AU.
2. The Pan African Parliament shall elect, at its first sitting, by secret ballot, from among its members and in accordance with its Rules of Procedure, a President and four (4) Vice-Presidents representing the five (5) regions of the AU. The election shall, in each case, be by simple majority of the members present and voting. At least two (2) of the Bureau Members shall be women.
3. The Bureau shall, in line with the relevant AU rules and regulations, be responsible for the development of policies for the management and administration of the affairs and property of the Pan African Parliament, which shall be submitted to the Plenary for approval.



- f) Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;
 - g) Promote the programmes and objectives of African Union in Member States;
 - h) Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;
 - i) Liaise with National Parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa;
 - j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.
3. Without prejudice to the preceding paragraphs and in so far as it is not in conflict with the mandate of any other organ of the AU, the powers and functions of the Parliament may also be exercised through:
- a) Fact-finding or inquiry missions;
 - b) Observer missions;
4. a) The Pan African Parliament shall have the power in accordance with the Financial Rules and Regulations of the African Union, to engage in fund raising activities.
- b) The Pan African Parliament shall not have the power to raise a loan.
5. For the avoidance of doubt, paragraph 2 shall not apply to the Assembly, Council or Court.

Article 9

Privileges and Immunities of the Pan-African Parliamentarians

1. The Pan African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.
2. The Pan African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a member of the Pan African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her, within or outside the Pan

a medical report in accordance with rules provided for in the Rules of Procedure.

5. Where a vacancy occurs in the office of a member of the Pan African Parliament a bye-election shall be conducted to fill his or her place subject to Article 4(3). The person elected shall serve for the remainder of the term of the member and shall be eligible for re-election for a full term.

Article 7 **Voting in the Pan African Parliament**

The Pan African Parliamentarian shall vote in person and in his or her personal and independent capacity except when he or she is on an official mission of the Parliament in which case he or she may vote through a proxy. A Parliamentarian cannot act as a proxy for more than one (1) Member at a time.

Article 8 **Functions and Powers**

1. The Pan African Parliament shall be the legislative organ of the African Union. In this regard,
 - a) The Assembly shall determine the subjects/areas on which the Pan African Parliament may propose draft model laws;
 - b) The Pan African Parliament may on its own make proposals on the subjects/areas on which it may submit or recommend draft Model Laws to the Assembly for its consideration and approval.
2. The Pan African Parliament shall also:
 - a) Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audit and other reports and make recommendations thereon;
 - b) Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;
 - c) Establish any Parliamentary Committee and determine its functions, mandate, composition and term of office;
 - d) Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly as it may deem appropriate;
 - e) Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;

6. For the avoidance of doubt, a Member of a National Parliament or other deliberative body is eligible to contest an election to the Pan African Parliament. However, if elected, he or she shall resign from the National Parliament or other deliberative body.

Article 6
Tenure of Office of a Member and Vacancies

1. The term of a Member of the Pan African Parliament shall be five (5) years. He or she shall be eligible for re-election for one (1) further term only.
2. The term of a Member of the Pan African Parliament shall commence from the date on which he or she is sworn into office and shall end on the last day of the term of the Parliament.
3. The seat of a Member of the Pan African Parliament shall become vacant if the holder:
 - a) dies;
 - b) ceases to satisfy the eligibility criteria stipulated in this Protocol for Members of the Pan African Parliament;
 - c) is unable to perform his or her functions because of physical or mental incapacity;
 - d) resigns in writing to the President ;
 - e) is removed on grounds of misconduct by the Pan African Parliament in accordance with its Rules of Procedure;
 - f) is absent from the Pan African Parliament meetings for such period and in such circumstances as are prescribed by the Rules of Procedure of the Pan African Parliament;
 - g) is convicted by a court of competent jurisdiction of an offence involving fraud, dishonesty or moral integrity and sentenced to a term of imprisonment exceeding six (6) months
 - h) Represents a State Party which is suspended from participating in the activities of the AU;
 - i) When his or her term expires.
4. Removal on the grounds stipulated in paragraph 6(c) or 6 (e) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of a debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of a removal on the grounds stipulated in paragraph 6(c), the motion shall, in addition, be supported by



- (b) The representation of each State Party must reflect the diversity of political opinions in each National Parliament or other deliberative body taking into account the number of members from each political party represented in the national Parliament.
 - (c) The elections of Members of the Pan African Parliament by the National Parliaments or other deliberative body shall be conducted as far as possible in the same month throughout the Member States as maybe decided by the Assembly.
 - (d) The election of the President of the Pan African Parliament shall be presided over by the Chairperson of the Assembly
2. (a) Qualifications for election to the Pan African Parliament shall be the same as for a National Parliament or other deliberative body.
- (b) Notwithstanding paragraph 2(a) of this Article, membership of the Pan African Parliament shall not be compatible with the exercise of executive or judicial functions in a State Party or a permanent office in the AU, a Regional Economic Community or other international organization.
3. Until a code is developed for election to the Pan African Parliament by direct universal suffrage, the procedure for election to the Pan African Parliament shall be determined by the National Parliament or other deliberative body of each Member State.
4. (a) The institution of a Member State which determines disputes about elections to the National Assembly or other deliberative body shall be responsible for determining any question that may arise as to whether a person has been duly elected a Member of the Pan African Parliament or whether a vacancy has occurred in the representation at the Pan African Parliament of a Member State.
-
- (b) Where the institution decides that a vacancy has occurred a bye-election shall be conducted to elect another person to fill the vacancy.
5. The Speaker/President of the National Parliament or other deliberative body shall notify the President of the Pan African Parliament of every election under paragraph one (1) of this Article and every determination under paragraph four (4) of this Article.

- e) familiarize the peoples of Africa and the African Diaspora with the objectives and policies aimed at integrating the African Continent within the framework of the African Union;
- f) promote peace, security and stability;
- g) contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
- h) facilitate cooperation and development in Africa;
- i) strengthen continental solidarity, co-operation and development and build a sense of common destiny;
- j) facilitate cooperation among Regional Economic Communities in Africa and their Parliamentary fora;
- k) to encourage National and Regional Parliaments to ratify and integrate treaties adopted by the AU into their legal systems';
- l) co-operate with National and Regional Parliaments and similar bodies within and outside Africa as well as civil societies, community based organizations and grassroots organizations;
- m) invite and encourage the full participation of African Diaspora as an important part of the African peoples in the building of the African Union in accordance with modalities approved by the Assembly.

Article 4 Membership

1. Until the Assembly decides otherwise, each State Party shall be represented in the Pan African Parliament by an equal number of parliamentarians.

2. The membership of the Pan African Parliament shall comprise five (5) members elected by each State Party.
3. At least two (2) of the elected members, shall be women. A Delegation which does not satisfy this requirement shall not have the right to be accredited for representation in the Parliament.

Article 5 Elections

1. (a) The National Parliament or other deliberative body shall elect from outside its membership, five (5) members of the Pan African Parliament.

“President” unless otherwise specified means the Member of the Pan African Parliament elected to preside over the business of Parliament in accordance with Article 13 of this Protocol;

“Protocol” means the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament;

“Region of Africa” shall have the meaning assigned to it in the relevant decisions of the Assembly;

“State Party” means a Member State who has ratified or acceded to this Protocol.

“Treaty” means the Treaty Establishing the African Economic Community.

Article 2 The Pan African Parliament

1. The Pan African Parliament established by the Protocol to the Treaty establishing the African Economic Community Relating to the Establishment of the Pan African Parliament is hereby continued in existence and shall have the functions and powers provided for in the present Protocol.
2. The organs of the Pan African Parliament shall be the Plenary, the Bureau, the Secretariat, Committees and regional groups.
3. The Pan African Parliamentarians shall represent all the peoples of Africa and the interests of the African diaspora.

Article 3 Objectives of the Pan African Parliament

The objectives of the Pan African Parliament shall be to:

- a) give a voice to the African peoples and the Diaspora;
- b) facilitate the effective implementation of the policies and objectives of the AU;
- c) promote the principles of human and peoples' rights and democracy in Africa;
- d) encourage good governance, respect for the rule of law, transparency and accountability in Member States;



“**Assembly**” means the Assembly of Heads of States and Government of the African Union;

“**Bureau**” means the Bureau of the Pan-African Parliament and it is composed by the President and Vice-Presidents of the Pan-African Parliament;

“**Chairperson of the Commission**” refers to the Chairperson of the African Union Commission;

“**Secretary-General**” means the Secretary-General of the Pan African Parliament;

“**Commission**” means the African Union Commission;

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“**Deputy Secretary-General**” means the Deputy Secretary-General of the Pan African Parliament;

“**Inaugural Session**” means the first meeting of the Pan African Parliament after the election of the Members;

“**Member of Pan African Parliament**” or **Pan African Parliamentarian**” or **Member**” means a person elected to the Pan African Parliament in accordance with Article 5 of this Protocol;

“**Member State**” means a Member State of the African Union;

“**OAU**” means the Organization of African Unity;

“**Other deliberative body**” means the institution in a Member State which performs the legislative functions of the State;

“**Parliament**” means the Pan African Parliament;

“**Plenary**” means a meeting of the whole or full Parliament;

adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990;

Considering that by the Algiers Declaration (AHG/Decl. 1 (XXXV) of 14 July 1999, the Assembly reaffirmed its faith in the African Economic Community;

Determined to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

Further determined to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

Conscious of the obligations and legal implications for Member States of the need to establish the Pan African Parliament;

Taking into account the decision of the Assembly adopted at its Twelfth Ordinary Session held in Addis Ababa, Ethiopia in February 2009 [Assembly/AU/Dec. 223 (XII)] requesting the Commission to initiate a review process of the Protocol in consultation with the Permanent Representatives Committee taking into account the views of the Pan African Parliament;

Noting that Articles 25 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament provided for a review of the operation and effectiveness of the Protocol and the system of representation in the Pan African Parliament after five years and also for further Conferences of the Members at intervals of ten (10) years or such shorter time as may be decided by the Pan-African Parliament;

Firmly convinced that the strengthening of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

HEREBY AGREE AS FOLLOWS:

Article 1 Definitions

In this Protocol,

“AU” means the African Union;

“African Diaspora” means peoples of African origin living outside the Continent irrespective of their citizenship and nationality and who are willing to contribute to the development of the Continent and the building of the African Union;



PREAMBLE

The Member States of the African Union, States Parties to the Constitutive Act of the African Union:

Bearing in mind the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya on 9.9.99 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, on 3 June 1991, and the establishment of the Pan-African Parliament by the year 2000;

Noting, in particular, the adoption by the Assembly of Heads of State and Government meeting at its 36th Ordinary Session in Lome, Togo, from 10 to 12 July 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa;

Considering the principles and objectives stated in the Constitutive Act of the African Union;

Further considering that Articles 5 and 17 of the Constitutive Act of the African Union provide for a Pan-African Parliament as an organ of the African Union, whose composition, functions, powers and organization are to be defined in a Protocol;

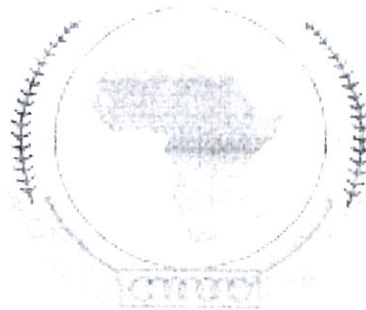
Further noting that the establishment of the Pan African Parliament is informed by a vision to provide a common platform for African peoples in the continent and the diaspora and their grassroots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent;

Conscious of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

Recalling the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res. 236 (XXXI)), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level;

Further Recalling the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was





**PROTOCOL TO THE CONSTITUTIVE ACT
OF THE AFRICAN UNION RELATING TO
THE PAN-AFRICAN PARLIAMENT**



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Ref. No. **MFA. AU 16/49**

6th March, 2015

Mr. Justin Bundi
Clerk to the National Assembly
Parliament Buildings
Nairobi.

Mr. J. M. Nyegenye
Clerk of the Senate
Parliament Buildings
Nairobi.

Dear Clerk

**RE: RATIFICATION OF THE PROTOCOL TO THE CONSTITUTIVE ACT OF THE
AFRICAN UNION RELATING TO THE PAN-AFRICAN PARLIAMENT**

Reference is made to the new Protocol relating to the Pan African Parliament (PAP) that was adopted during the 23rd Ordinary Session of the African Union Assembly that was held in Malabo, Equatorial Guinea in June, 2014 (*copy attached*). It is expected that the Protocol shall enter into force after receipt of the 28th instrument of ratification.

You may be aware that H.E. the President has accepted to be the Special Guest of Honour at the Pan African Parliament's 10th Anniversary celebrations which are set for 18th May, 2015 in Midrand, South Africa. It may therefore augur well with the President's vision of Pan-Africanism and Africa Renaissance to have Kenya as the first African country to ratify the new Protocol of the PAP and to actually announce it during the occasion.

This is therefore to request that you consider initiating the ratification process of this Protocol.

Yours Sincerely,


DR (ENG) KARANJA KIBICHO, CBS
PRINCIPAL SECRETARY

Encl.

① D/L & P
Pse process
CMA -
17/3/15

② Mrs Wanyonyi
For Tabling
JW
18/3

③ Maie
before and take
action - Lucy
18/3





**PROTOCOL TO THE CONSTITUTIVE ACT
OF THE AFRICAN UNION RELATING TO
THE PAN-AFRICAN PARLIAMENT**

PREAMBLE

The Member States of the African Union, States Parties to the Constitutive Act of the African Union:

Bearing in mind the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya on 9.9.99 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, on 3 June 1991, and the establishment of the Pan-African Parliament by the year 2000;

Noting, in particular, the adoption by the Assembly of Heads of State and Government meeting at its 36th Ordinary Session in Lome, Togo, from 10 to 12 July 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa;

Considering the principles and objectives stated in the Constitutive Act of the African Union;

Further considering that Articles 5 and 17 of the Constitutive Act of the African Union provide for a Pan-African Parliament as an organ of the African Union, whose composition, functions, powers and organization are to be defined in a Protocol;

Further noting that the establishment of the Pan African Parliament is informed by a vision to provide a common platform for African peoples in the continent and the diaspora and their grassroots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent;

Conscious of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

Recalling the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res. 236 (XXXI)), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level;

Further Recalling the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was

adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990;

Considering that by the Algiers Declaration (AHG/Decl. 1 (XXXV) of 14 July 1999, the Assembly reaffirmed its faith in the African Economic Community;

Determined to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

Further determined to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

Conscious of the obligations and legal implications for Member States of the need to establish the Pan African Parliament;

Taking into account the decision of the Assembly adopted at its Twelfth Ordinary Session held in Addis Ababa, Ethiopia in February 2009 [Assembly/AU/Dec. 223 (XII)] requesting the Commission to initiate a review process of the Protocol in consultation with the Permanent Representatives Committee taking into account the views of the Pan African Parliament;

Noting that Articles 25 of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament provided for a review of the operation and effectiveness of the Protocol and the system of representation in the Pan African Parliament after five years and also for further Conferences of the Members at intervals of ten (10) years or such shorter time as may be decided by the Pan-African Parliament;

Firmly convinced that the strengthening of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

HEREBY AGREE AS FOLLOWS:

Article 1 Definitions

In this Protocol,

"AU" means the African Union;

"African Diaspora" means peoples of African origin living outside the Continent irrespective of their citizenship and nationality and who are willing to contribute to the development of the Continent and the building of the African Union;

“Assembly” means the Assembly of Heads of States and Government of the African Union;

“Bureau” means the Bureau of the Pan-African Parliament and it is composed by the President and Vice-Presidents of the Pan-African Parliament;

“Chairperson of the Commission” refers to the Chairperson of the African Union Commission;

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“Member of Pan African Parliament” or **“Pan African Parliamentarian”** or **“Member”** means a person elected to the Pan African Parliament in accordance with Article 5 of this Protocol;

“Member State” means a Member State of the African Union;

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“Other deliberative body” means the institution in a Member State which performs the legislative functions of the State;

“Parliament” means the Pan African Parliament;

“Plenary” means a meeting of the whole or full Parliament;

“President” unless otherwise specified means the Member of the Pan African Parliament elected to preside over the business of Parliament in accordance with Article 13 of this Protocol;

“Protocol” means the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament;

“Region of Africa” shall have the meaning assigned to it in the relevant decisions of the Assembly;

“State Party” means a Member State who has ratified or acceded to this Protocol.

“Treaty” means the Treaty Establishing the African Economic Community.

Article 2 The Pan African Parliament

1. The Pan African Parliament established by the Protocol to the Treaty establishing the African Economic Community Relating to the Establishment of the Pan African Parliament is hereby continued in existence and shall have the functions and powers provided for in the present Protocol.
2. The organs of the Pan African Parliament shall be the Plenary, the Bureau, the Secretariat, Committees and regional groups.
3. The Pan African Parliamentarians shall represent all the peoples of Africa and the interests of the African diaspora.

Article 3 Objectives of the Pan African Parliament

The objectives of the Pan African Parliament shall be to:

- a) give a voice to the African peoples and the Diaspora;
- b) facilitate the effective implementation of the policies and objectives of the AU;
- c) promote the principles of human and peoples' rights and democracy in Africa;
- d) encourage good governance, respect for the rule of law, transparency and accountability in Member States;

- e) familiarize the peoples of Africa and the African Diaspora with the objectives and policies aimed at integrating the African Continent within the framework of the African Union;
- f) promote peace, security and stability;
- g) contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
- h) facilitate cooperation and development in Africa;
- i) strengthen continental solidarity, co-operation and development and build a sense of common destiny;
- j) facilitate cooperation among Regional Economic Communities in Africa and their Parliamentary fora;
- k) to encourage National and Regional Parliaments to ratify and integrate treaties adopted by the AU into their legal systems';
- l) co-operate with National and Regional Parliaments and similar bodies within and outside Africa as well as civil societies, community based organizations and grassroots organizations;
- m) invite and encourage the full participation of African Diaspora as an important part of the African peoples in the building of the African Union in accordance with modalities approved by the Assembly.

Article 4 Membership

1. Until the Assembly decides otherwise, each State Party shall be represented in the Pan African Parliament by an equal number of parliamentarians.
2. The membership of the Pan African Parliament shall comprise five (5) members elected by each State Party.
3. At least two (2) of the elected members, shall be women. A Delegation which does not satisfy this requirement shall not have the right to be accredited for representation in the Parliament.

Article 5 Elections

1. (a) The National Parliament or other deliberative body shall elect from outside its membership, five (5) members of the Pan African Parliament.



- (b) The representation of each State Party must reflect the diversity of political opinions in each National Parliament or other deliberative body taking into account the number of members from each political party represented in the national Parliament.
 - (c) The elections of Members of the Pan African Parliament by the National Parliaments or other deliberative body shall be conducted as far as possible in the same month throughout the Member States as maybe decided by the Assembly.
 - (d) The election of the President of the Pan African Parliament shall be presided over by the Chairperson of the Assembly
2. (a) Qualifications for election to the Pan African Parliament shall be the same as for a National Parliament or other deliberative body.
- (b) Notwithstanding paragraph 2(a) of this Article, membership of the Pan African Parliament shall not be compatible with the exercise of executive or judicial functions in a State Party or a permanent office in the AU, a Regional Economic Community or other international organization.
3. Until a code is developed for election to the Pan African Parliament by direct universal suffrage, the procedure for election to the Pan African Parliament shall be determined by the National Parliament or other deliberative body of each Member State.
4. (a) The institution of a Member State which determines disputes about elections to the National Assembly or other deliberative body shall be responsible for determining any question that may arise as to whether a person has been duly elected a Member of the Pan African Parliament or whether a vacancy has occurred in the representation at the Pan African Parliament of a Member State.
- (b) Where the institution decides that a vacancy has occurred a bye-election shall be conducted to elect another person to fill the vacancy.
5. The Speaker/President of the National Parliament or other deliberative body shall notify the President of the Pan African Parliament of every election under paragraph one (1) of this Article and every determination under paragraph four (4) of this Article.

6. For the avoidance of doubt, a Member of a National Parliament or other deliberative body is eligible to contest an election to the Pan African Parliament. However, if elected, he or she shall resign from the National Parliament or other deliberative body.

Article 6
Tenure of Office of a Member and Vacancies

1. The term of a Member of the Pan African Parliament shall be five (5) years. He or she shall be eligible for re-election for one (1) further term only.
2. The term of a Member of the Pan African Parliament shall commence from the date on which he or she is sworn into office and shall end on the last day of the term of the Parliament.
3. The seat of a Member of the Pan African Parliament shall become vacant if the holder:
 - a) dies;
 - b) ceases to satisfy the eligibility criteria stipulated in this Protocol for Members of the Pan African Parliament;
 - c) is unable to perform his or her functions because of physical or mental incapacity;
 - d) resigns in writing to the President ;
 - e) is removed on grounds of misconduct by the Pan African Parliament in accordance with its Rules of Procedure;
 - f) is absent from the Pan African Parliament meetings for such period and in such circumstances as are prescribed by the Rules of Procedure of the Pan African Parliament;
 - g) is convicted by a court of competent jurisdiction of an offence involving fraud, dishonesty or moral integrity and sentenced to a term of imprisonment exceeding six (6) months
 - h) Represents a State Party which is suspended from participating in the activities of the AU;
 - i) When his or her term expires.
4. Removal on the grounds stipulated in paragraph 6(c) or 6 (e) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of a debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of a removal on the grounds stipulated in paragraph 6(c), the motion shall, in addition, be supported by

a medical report in accordance with rules provided for in the Rules of Procedure.

5. Where a vacancy occurs in the office of a member of the Pan African Parliament a bye-election shall be conducted to fill his or her place subject to Article 4(3). The person elected shall serve for the remainder of the term of the member and shall be eligible for re-election for a full term.

Article 7 Voting in the Pan African Parliament

The Pan African Parliamentarian shall vote in person and in his or her personal and independent capacity except when he or she is on an official mission of the Parliament in which case he or she may vote through a proxy. A Parliamentarian cannot act as a proxy for more than one (1) Member at a time.

Article 8 Functions and Powers

1. The Pan African Parliament shall be the legislative organ of the African Union. In this regard,
 - a) The Assembly shall determine the subjects/areas on which the Pan African Parliament may propose draft model laws;
 - b) The Pan African Parliament may on its own make proposals on the subjects/areas on which it may submit or recommend draft Model Laws to the Assembly for its consideration and approval.
2. The Pan African Parliament shall also:
 - a) Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audit and other reports and make recommendations thereon;
 - b) Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;
 - c) Establish any Parliamentary Committee and determine its functions, mandate, composition and term of office;
 - d) Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly as it may deem appropriate;
 - e) Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;

- f) Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;
 - g) Promote the programmes and objectives of African Union in Member States;
 - h) Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;
 - i) Liaise with National Parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa;
 - j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.
3. Without prejudice to the preceding paragraphs and in so far as it is not in conflict with the mandate of any other organ of the AU, the powers and functions of the Parliament may also be exercised through:
- a) Fact-finding or inquiry missions;
 - b) Observer missions;
4. a) The Pan African Parliament shall have the power in accordance with the Financial Rules and Regulations of the African Union, to engage in fund raising activities.
- b) The Pan African Parliament shall not have the power to raise a loan.
5. For the avoidance of doubt, paragraph 2 shall not apply to the Assembly, Council or Court.

Article 9

Privileges and Immunities of the Pan-African Parliamentarians

1. The Pan African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.
2. The Pan African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a member of the Pan African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her, within or outside the Pan

Paper Laid

By the Hon. Aden Duale, EGH, MP
Leader of the Majority Party,
on Thursday, 16th April, 2015,
at 2.30 pm.



**PROTOCOL TO THE CONSTITUTIVE ACT
OF THE AFRICAN UNION RELATING TO
THE PAN-AFRICAN PARLIAMENT**

PREAMBLE

The Member States of the African Union, States Parties to the Constitutive Act of the African Union:

Bearing in mind the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in Sirte, Libya on 9.9.99 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty Establishing the African Economic Community signed in Abuja, Nigeria, on 3 June 1991, and the establishment of the Pan-African Parliament by the year 2000;

Noting, in particular, the adoption by the Assembly of Heads of State and Government meeting at its 36th Ordinary Session in Lome, Togo, from 10 to 12 July 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa;

Considering the principles and objectives stated in the Constitutive Act of the African Union;

Further considering that Articles 5 and 17 of the Constitutive Act of the African Union provide for a Pan-African Parliament as an organ of the African Union, whose composition, functions, powers and organization are to be defined in a Protocol;

Further noting that the establishment of the Pan African Parliament is informed by a vision to provide a common platform for African peoples in the continent and the diaspora and their grassroots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent;

Conscious of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

Recalling the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res. 236 (XXXI)), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level;

Further Recalling the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was



adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990;

Considering that by the Algiers Declaration (AHG/Decl. 1 (XXXV) of 14 July 1999, the Assembly reaffirmed its faith in the African Economic Community;

Determined to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

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Conscious of the obligations and legal implications for Member States of the need to establish the Pan African Parliament;

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Firmly convinced that the strengthening of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

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“Region of Africa” shall have the meaning assigned to it in the relevant decisions of the Assembly;

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The Pan African Parliament

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Objectives of the Pan African Parliament

The objectives of the Pan African Parliament shall be to:

- a) give a voice to the African peoples and the Diaspora;
- b) facilitate the effective implementation of the policies and objectives of the AU;
- c) promote the principles of human and peoples' rights and democracy in Africa;
- d) encourage good governance, respect for the rule of law, transparency and accountability in Member States;



- e) familiarize the peoples of Africa and the African Diaspora with the objectives and policies aimed at integrating the African Continent within the framework of the African Union;
- f) promote peace, security and stability;
- g) contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
- h) facilitate cooperation and development in Africa;
- i) strengthen continental solidarity, co-operation and development and build a sense of common destiny;
- j) facilitate cooperation among Regional Economic Communities in Africa and their Parliamentary fora;
- k) to encourage National and Regional Parliaments to ratify and integrate treaties adopted by the AU into their legal systems';
- l) co-operate with National and Regional Parliaments and similar bodies within and outside Africa as well as civil societies, community based organizations and grassroots organizations;
- m) invite and encourage the full participation of African Diaspora as an important part of the African peoples in the building of the African Union in accordance with modalities approved by the Assembly.

Article 4 Membership

1. Until the Assembly decides otherwise, each State Party shall be represented in the Pan African Parliament by an equal number of parliamentarians.
2. The membership of the Pan African Parliament shall comprise five (5) members elected by each State Party.
3. At least two (2) of the elected members, shall be women. A Delegation which does not satisfy this requirement shall not have the right to be accredited for representation in the Parliament.

Article 5 Elections

1. (a) The National Parliament or other deliberative body shall elect from outside its membership, five (5) members of the Pan African Parliament.



- (b) The representation of each State Party must reflect the diversity of political opinions in each National Parliament or other deliberative body taking into account the number of members from each political party represented in the national Parliament.
 - (c) The elections of Members of the Pan African Parliament by the National Parliaments or other deliberative body shall be conducted as far as possible in the same month throughout the Member States as maybe decided by the Assembly.
 - (d) The election of the President of the Pan African Parliament shall be presided over by the Chairperson of the Assembly
2. (a) Qualifications for election to the Pan African Parliament shall be the same as for a National Parliament or other deliberative body.
- (b) Notwithstanding paragraph 2(a) of this Article, membership of the Pan African Parliament shall not be compatible with the exercise of executive or judicial functions in a State Party or a permanent office in the AU, a Regional Economic Community or other international organization.
3. Until a code is developed for election to the Pan African Parliament by direct universal suffrage, the procedure for election to the Pan African Parliament shall be determined by the National Parliament or other deliberative body of each Member State.
4. (a) The institution of a Member State which determines disputes about elections to the National Assembly or other deliberative body shall be responsible for determining any question that may arise as to whether a person has been duly elected a Member of the Pan African Parliament or whether a vacancy has occurred in the representation at the Pan African Parliament of a Member State.
- (b) Where the institution decides that a vacancy has occurred a bye-election shall be conducted to elect another person to fill the vacancy.
5. The Speaker/President of the National Parliament or other deliberative body shall notify the President of the Pan African Parliament of every election under paragraph one (1) of this Article and every determination under paragraph four (4) of this Article.



6. For the avoidance of doubt, a Member of a National Parliament or other deliberative body is eligible to contest an election to the Pan African Parliament. However, if elected, he or she shall resign from the National Parliament or other deliberative body.

Article 6
Tenure of Office of a Member and Vacancies

1. The term of a Member of the Pan African Parliament shall be five (5) years. He or she shall be eligible for re-election for one (1) further term only.
2. The term of a Member of the Pan African Parliament shall commence from the date on which he or she is sworn into office and shall end on the last day of the term of the Parliament.
3. The seat of a Member of the Pan African Parliament shall become vacant if the holder:
 - a) dies;
 - b) ceases to satisfy the eligibility criteria stipulated in this Protocol for Members of the Pan African Parliament;
 - c) is unable to perform his or her functions because of physical or mental incapacity;
 - d) resigns in writing to the President ;
 - e) is removed on grounds of misconduct by the Pan African Parliament in accordance with its Rules of Procedure;
 - f) is absent from the Pan African Parliament meetings for such period and in such circumstances as are prescribed by the Rules of Procedure of the Pan African Parliament;
 - g) is convicted by a court of competent jurisdiction of an offence involving fraud, dishonesty or moral integrity and sentenced to a term of imprisonment exceeding six (6) months
 - h) Represents a State Party which is suspended from participating in the activities of the AU;
 - i) When his or her term expires.
4. Removal on the grounds stipulated in paragraph 6(c) or 6 (e) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of a debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of a removal on the grounds stipulated in paragraph 6(c), the motion shall, in addition, be supported by



a medical report in accordance with rules provided for in the Rules of Procedure.

5. Where a vacancy occurs in the office of a member of the Pan African Parliament a bye-election shall be conducted to fill his or her place subject to Article 4(3). The person elected shall serve for the remainder of the term of the member and shall be eligible for re-election for a full term.

Article 7 **Voting in the Pan African Parliament**

The Pan African Parliamentarian shall vote in person and in his or her personal and independent capacity except when he or she is on an official mission of the Parliament in which case he or she may vote through a proxy. A Parliamentarian cannot act as a proxy for more than one (1) Member at a time.

Article 8 **Functions and Powers**

1. The Pan African Parliament shall be the legislative organ of the African Union. In this regard,
 - a) The Assembly shall determine the subjects/areas on which the Pan African Parliament may propose draft model laws;
 - b) The Pan African Parliament may on its own make proposals on the subjects/areas on which it may submit or recommend draft Model Laws to the Assembly for its consideration and approval.
2. The Pan African Parliament shall also:
 - a) Receive and consider reports of other organs of the African Union as may be referred to it by the Council or the Assembly, including audit and other reports and make recommendations thereon;
 - b) Debate and discuss its own budget and the budget of the Union and make recommendations thereon to the relevant policy organs;
 - c) Establish any Parliamentary Committee and determine its functions, mandate, composition and term of office;
 - d) Discuss any matter relevant to the African Union and make recommendations to the Council or the Assembly as it may deem appropriate;
 - e) Make proposals to the Council on the structure of the Secretariat of the Parliament taking into account its needs;



- f) Request the attendance of officials of the other organs of the African Union at its sessions to offer assistance to the Parliament in the discharge of its duties;
 - g) Promote the programmes and objectives of African Union in Member States;
 - h) Receive, consider and submit opinions on draft legal instruments, treaties and other international agreements as may be referred to it by the Council or Assembly;
 - i) Liaise with National Parliaments or other deliberative bodies and the Parliaments of the Regional Economic Communities on all matters relating to the African Union and regional integration in Africa;
 - j) Carry out such other activities as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.
3. Without prejudice to the preceding paragraphs and in so far as it is not in conflict with the mandate of any other organ of the AU, the powers and functions of the Parliament may also be exercised through:
- a) Fact-finding or inquiry missions;
 - b) Observer missions;
4. a) The Pan African Parliament shall have the power in accordance with the Financial Rules and Regulations of the African Union, to engage in fund raising activities.
- b) The Pan African Parliament shall not have the power to raise a loan.
5. For the avoidance of doubt, paragraph 2 shall not apply to the Assembly, Council or Court.

Article 9

Privileges and Immunities of the Pan-African Parliamentarians

1. The Pan African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.
2. The Pan African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a member of the Pan African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her, within or outside the Pan



African Parliament in his or her capacity as a Pan African Parliamentarian in the discharge of his or her duties.

3. Without prejudice to paragraph 2 of this Article, the Pan African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

Article 10 Allowances

1. The Pan-African Parliamentarians shall be paid allowances by their respective State Parties.
2. The allowances for the President, Vice Presidents and other officials of Committees shall be the responsibility of the respective States Parties.

Article 11 Rules of Procedure

1. The Parliament may adopt and amend its own Rules of Procedure including the procedures for giving effect to its mandate under Article 8 of this Protocol, by a two-thirds majority of all its members.
2. In developing its Rules of Procedure, the Parliament shall ensure consistency of these Rules with AU rules and regulations.

Article 12 The Bureau of the Pan African Parliament

1. There shall be a Bureau of the Pan African Parliament which shall be elected on a rotational basis among the five (5) regions of the AU.
2. The Pan African Parliament shall elect, at its first sitting, by secret ballot, from among its members and in accordance with its Rules of Procedure, a President and four (4) Vice-Presidents representing the five (5) regions of the AU. The election shall, in each case, be by simple majority of the members present and voting. At least two (2) of the Bureau Members shall be women.
3. The Bureau shall, in line with the relevant AU rules and regulations, be responsible for the development of policies for the management and administration of the affairs and property of the Pan African Parliament, which shall be submitted to the Plenary for approval.



4. The functions of the President and the Vice-Presidents shall be defined in the Rules of Procedure.
5. The term of office of the President and the Vice-Presidents of the Bureau shall be two (2) and a half years renewable once.
6. The President shall preside over all parliamentary proceedings except those held in committees and, in his or her absence, the Vice-Presidents shall act in rotation, in accordance with the Rules of Procedure.
7. The Vice-Presidents shall be ranked in the order of First, Second, Third and Fourth Vice-President, in accordance with the result of the vote. In the absence of the President, each Vice President shall stand in for the President in rotation.
8. The offices of the President and Vice-President shall become vacant if the holder:
 - a) dies;
 - b) resigns in writing to the Bureau;
 - c) is unable to perform his or her functions for reasons of physical or mental incapacity;
 - d) is removed on grounds of misconduct;
 - e) loses his/her membership of the Pan African Parliament or when his or her term of office expires.
9. Removal on the grounds stipulated in paragraph 8 (c) or 8 (d) above shall be by a resolution on a motion to be decided on by secret ballot and supported at the end of debate by two-thirds majority of all the Members of the Pan African Parliament. In the case of removal on the grounds stipulated in 8(c), the motion shall, in addition, be supported by a medical report.
10. In case of a vacancy in the Bureau, a Member of the Pan African Parliament shall be elected in his/her place to complete his/her term, through an election at the sitting of the Pan African Parliament immediately following its occurrence.
11. The President may, with the approval of the Bureau, invite any person to a session of the Pan African Parliament, if in the opinion of the Bureau the business to be transacted at that session renders the presence of that person desirable.



Article 13
The Secretary-General of the Pan African Parliament

1. The Pan African Parliament shall, on the recommendation of the Bureau, appoint a Secretary General and two Deputy Secretaries General in accordance with the AU Staff Rules and Regulations.
2. The Secretary General shall appoint, after consultation with the Bureau, such other staff as may be necessary for the proper functioning of the Pan African Parliament, in accordance with the AU Staff Rules and Regulations.
3. The Secretary General and a Deputy Secretary General shall be a person of proven experience or expertise in parliamentary practice, management and financial administration, and a demonstrated interest and understanding of the process of integration in Africa.
4. The Secretary General shall be the head of the Secretariat, and shall be responsible for the day to day management and administration of the affairs and property of the Pan African Parliament. He/ she shall be accountable to the Parliament through the Bureau.
5. The Secretary General shall be the Accounting Officer of the Parliament.
6. The Secretary General shall, as soon as practicable, cause to be transmitted to the Secretaries General/Clerks of the National Parliaments or other deliberative body and the Parliaments of the Regional Economic Communities copies of the records of all the relevant debates at the sessions and committee hearings of the Pan African Parliament for information.
7. The Deputy Secretaries General shall assist the Secretary General in the discharge of his/her duties.
8. The Secretary General shall ensure that proper books of account are kept for the Pan African Parliament; the Secretary General shall submit annually a report on the utilization of the funds available to the Pan African Parliament including its budgetary allocation through the Bureau to the Council in accordance with the AU Financial Rules and Regulations.
9. The Secretary General and the Deputy Secretaries General shall before assuming office take an Oath or make a Solemn Declaration before the Pan African Parliament.



Article 14 Oath of Office

At its sitting following the election and before transacting any other business, the Parliamentarians shall take an Oath or make a Solemn Declaration. The text of the Oath or Declaration shall be set out as an addendum to the Rules of Procedure.

Article 15 Sessions and Quorum

1. The inaugural session of the Pan African Parliament shall be convened by the Secretary General;
2. The Pan African Parliament shall meet in ordinary session at least twice a year, within a period to be determined in the Rules of Procedure. Each ordinary session may last up to one (1) month.
3. The Bureau, the Assembly, the Council or at least two-thirds of the Pan-African Parliamentarians may, by written notification addressed to the President, request an extraordinary session, subject to the following: -
 - a) The request shall provide the reasons for and details of the matters to be discussed at the proposed extraordinary session.
 - b) The President shall convene such a session within such time as provided for in the Rules of Procedure.
 - c) The session shall discuss only those matters stipulated in the request.
 - d) The session shall end upon exhaustion of the agenda.
 - e) In any case, the duration of an extraordinary session shall not exceed ten (10) days.
4. The proceedings of the Pan African Parliament shall be open to the public, unless otherwise directed by the Bureau.
5.
 - (a) The quorum for a meeting of the Pan African Parliament shall be determined by the Rules of Procedure.
 - (b) The Rules of Procedure may differentiate between the quorum necessary for the conducting ordinary business by the Pan African Parliament and the quorum needed for making valid decisions.



Article 16
Budget of the Pan African Parliament

1. The annual budget of the Pan African Parliament shall constitute an integral part of the regular budget of the AU.
2. The budget shall be drawn up by the Pan African Parliament and submitted to the relevant AU policy organs for approval, in accordance with the AU Financial Rules and Regulations.
3. The financial year of the Pan African Parliament shall be the same as that of the AU.

Article 17
Seat of the Pan-African Parliament

1. The seat of the Pan African Parliament shall be located in the Republic of South Africa.
2. The Pan African Parliament may convene in the territory of any Member State at the invitation of that Member State.

Article 18
Official and Working Languages

The official and working languages of the Pan African Parliament shall be those of the AU.

Article 19
Relations between the Pan African Parliament, the Parliaments of Regional Economic Communities and National Parliaments or other Deliberative Bodies

1. The Pan African Parliament shall work in close co-operation with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body. To this effect, the Pan African Parliament may, in accordance with its Rules of Procedure, convene annual consultative fora with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative body to discuss matters of common interest.



2. The Pan African Parliament shall periodically submit a report in writing on its work to the National Parliaments or other deliberative bodies for information. Copies of such reports shall also be submitted to the Ministers with responsibility for foreign affairs, African Union affairs and/ or regional integration.

Article 20
Relations between the Pan African Parliament and
other organs of the AU

1. The Chairperson of the Assembly shall deliver a speech on the state of the AU at each inaugural Session of a new term of the Pan African Parliament.
2. The Chairperson of the Commission shall, at least once during the term of each Parliament, present the Activity Report of the Commission to the Pan African Parliament.
3. The other organs of the AU, except the Assembly, the Council and the Court, shall forward their activity reports annually to the Pan African Parliament by the third month of each succeeding year.
4. The Pan African Parliament shall forward its annual Activity Report to the different organs of the AU, at the latest, by the third month of each succeeding year.

Article 21
Interpretation

The Court shall have jurisdiction on all questions of interpretation of this Protocol.

Article 22
Signature and Ratification

1. This Protocol shall be signed and ratified by Member States in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 23
Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson of the Commission by a simple majority of the Member States.



Article 24
Accession

1. A Member State shall accede to this Protocol, after its entry into force, by depositing its instrument of accession with the Chairperson of the Commission. The Chairperson of the Commission shall, upon receipt of such instrument of accession, notify all Member States.
2. For any Member State acceding to this Protocol, the Protocol shall come into force on the date of the deposit of its instrument of accession.

Article 25
Amendment or Revision of the Protocol

1. This Protocol may be amended or revised by a decision of a two-thirds majority of the Assembly.
2. A Member State party to this Protocol or the Pan African Parliament may propose, in writing to the Chairperson of the Commission any amendment or revision of the Protocol.
3. The Chairperson of the Commission shall notify the proposal to all Member States at least thirty (30) days before the meeting of the Assembly, which is to consider the proposal.
4. Save where the proposal originates from the Pan African Parliament, the Chairperson of the Commission shall request the opinion of the Pan African Parliament on the proposal and shall transmit the opinion, if any, to the Assembly, which may approve the proposal, taking into account the opinion of the Pan African Parliament.
5. The amendment or revision shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Chairperson by a simple majority of Member States.

Article 26
Review of the Protocol

Conferences to review the operation and effectiveness of the Protocol, the legislative mandate and the system of representation to the Pan African Parliament, may be organized by the States Parties at intervals of ten (10) years, or within such shorter time as the Pan African Parliament may decide with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision



underlying the Protocol, are being realized and that the Protocol meets with the evolving needs of African States.

Article 27
Transitional Provision

1. The present Protocol shall upon entry into force replace the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan African Parliament.
2. The term of office of Member of the Parliament shall terminate within a period not exceeding one year of the entry into force of this Protocol.

**ADOPTED BY THE TWENTY-THIRD ORDINARY SESSION OF
THE ASSEMBLY, HELD IN MALABO, EQUATORIAL GUINEA**

27TH JUNE 2014





MINISTRY OF DEFENCE
OFFICE OF THE CABINET SECRETARY

Telegraphic Address: "DEFENCE"
Fax No: 020-2726321
Telephone: 020-2721100
Email: cabinet-secretary@mod.go.ke

ULINZI HOUSE
P.O. Box 40668-00100
NAIROBI
KENYA

When replying please quote **MOD.17/08**

17th March, 2015

Mr. Justin Bundi, CBS

Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.

Dear *Mr. Bundi,*

RE: RATIFICATION OF AGREEMENTS AND PROTOCOLS

Pursuant to Section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012; I hereby submit the following Agreements and the prerequisite Memoranda for consideration and ratification by the National Assembly.

- 1) The Mutual Defense Pact and Mutual Defense Pact (Amendment);
- 2) Agreement on the Establishment of the Eastern Africa Standby Force (EASF);
- 3) East Africa Community Protocol on Cooperation in Defence Affairs.

Yours


Amb. Raychelle Omamo, SC
CABINET SECRETARY

Enc.

Prof. Githu Muigai, EGH, SC
Attorney General
State Law Office
NAIROBI

1947



**MINISTRY OF DEFENCE
OFFICE OF THE CABINET SECRETARY**

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① D/LAP

ULINZI HOUSE
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NAIROBI
KENYA

When replying please quote **MOD.17/08**

4th March, 2015

Pse process
CMA
5/3/15

Mr. Justin Bundi, CBS
Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.

③ Wanyama
T.N.A.

Dear **Mr. Bundi**

L.W
5/3

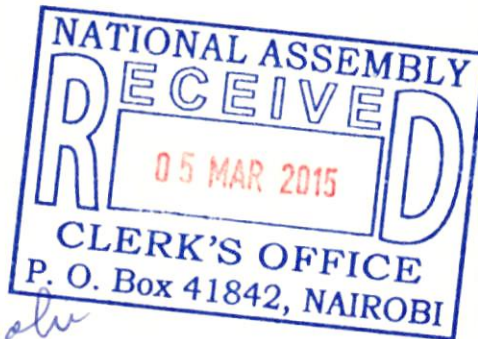
**RE: RATIFICATION OF THE MUTUAL DEFENCE PACT
BETWEEN THE REPUBLICS OF KENYA, UGANDA AND RWANDA**

Pursuant to Section 8(1) of the Treaty Making and Ratification Act No. 45 of 2012; I hereby submit the subject Agreement and the prerequisite Memorandum for consideration and ratification by Parliament.

Yours **sincerely**


Am. Raychelle Omamo, SC
CABINET SECRETARY

Enc.



② Mrs Lucy Wanyama
For Tabling

Pass by Wanjohi
For Tabling JK 5/2

1405

Waym



**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
OFFICE OF THE CABINET SECRETARY**

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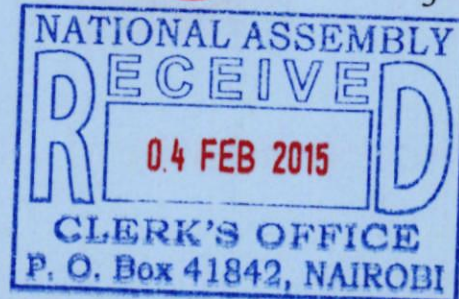
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NAIROBI



MOT & I/C/RAIL/007/3 VOL.V (11)

3rd February 2015

Mr. Justin Bundi
Clerk of the National Assembly
NAIROBI



Dear *Justin*

RATIFICATION OF THE PROTOCOL ON DEVELOPMENT AND OPERATION OF THE STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK OF THE NORTHERN CORRIDOR INTERGRATION PROJECTS

During the 8th Summit of the Northern Corridor Integration Project, Partner States were directed to fast-track the ratification of the Protocol on Development and Operation of the Standard Gauge Railway before the next Summit scheduled to take place by end of February 2015. In this regard, the Cabinet during its meeting of 15th January 2015 approved the ratification of the Protocol on Development and Operation of the Standard Gauge Railway. The Ministry of Transport and Infrastructure was therefore directed to submit the Protocol to Parliament for ratification.

The purpose of this letter, therefore, is to request Members of Parliament to consider and ratify the Protocol before the next Summit in February/March 2015. Please therefore find attached herewith a copy of the Protocol and a brief on the same.

Yours *Sincerely*

Eng. M.S. M. KAMAU, CBS
CABINET SECRETARY

J.N.
for tabling & referral to the relevant Comt for consideration.

Sidai 5/2/15



Copy to: **Hon. Aden Duale**
Majority Leader
National Assembly
NAIROBI

Encl.

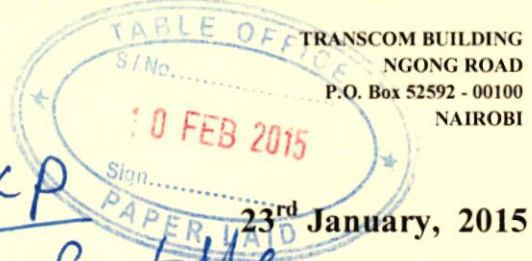
SECRET



**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
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When replying please quote



MOT/S/ADM/86 VOL.XVI/(91)

D/LCP
proven for table
CNS
27/1/15

23rd January, 2015

Mr. Justin Bundi
Clerk to the National Assembly
Parliament Building
NAIROBI

Ms Lucy Wanjohi
For Table 7
JN
27/1

Dear *Mr Bundi,*

**RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT
BETWEEN KENYA AND GHANA; AND KENYA AND NIGER**

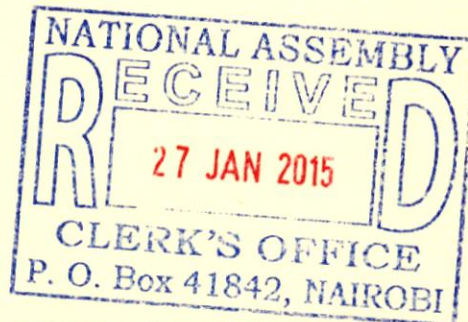
The Ninth Cabinet Meeting 2014, held on 20th November, 2014 vide Cabinet Memorandum CAB(14)122 considered and approved the ratification of the Bilateral Air Services Agreements between the Republic of Kenya and the Republic of Ghana initialled on 31st May, 2006; and the Republic of Kenya and the Republic of Niger initialled on 9th May, 2013.

The Treaty Making and Ratification Act, 2012 Section 8 requires that the Agreements be considered and approved by Parliament for ratification.

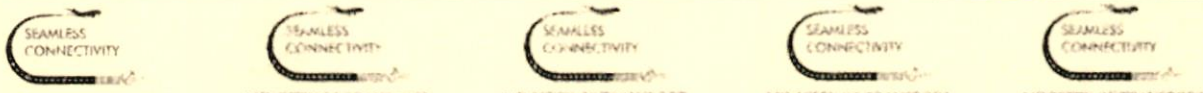
The purpose of this letter therefore is to forward to you a paper on the Agreements to be ratified and forty (40) copies of the Bilateral Air Services Agreements between the Republic of Kenya and the Republic of Ghana; and the Republic of Kenya and the Republic of Niger for the Transport, Public Works and Housing Committee.

Yours *Sincerely*

Nduva Muli, EBS
PRINCIPAL SECRETARY



Encls:



SECRET

3066



D/Lap

**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
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When replying please quote

MOT&I/AT/012 VOL. II (6)

Mr. Justin Bundi, CBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI



11th March, 2015

Dear *Mr Bundi,*

RATIFICATION OF THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION AND THE PROTOCOL SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT (BEIJING CONVENTION AND PROTOCOL)

Kenya is a signatory to the Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation (Montreal Convention 1971) as amended by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Protocol 1988). Further, Kenya is also a signatory to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970).

Kenya participated in the Diplomatic Conference held in Beijing, China from 30th August, 2010 to 10th September, 2010 which was aimed at modernizing the Hague Convention of 1970 and the Montreal Convention of 1971 as amended by the Montreal Protocol of 1988 to address emerging threats to civil aviation security.

In accordance with the provisions of the Treaty Making and Ratification Act, 2012 the two instruments were subjected to a stakeholders' consultative meeting held at the East Africa School of Aviation (EASA) on 20th May, 2014. The ratification of the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Convention and Protocol) was approved by the Cabinet vide Cabinet letter Ref. no. OP/CAB.58/4A dated 20th November, 2014.



Mrs Lucy Wanjohi
for Tabling Job
13/3

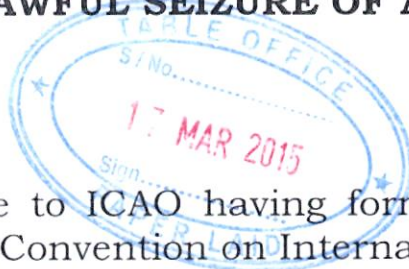
The purpose of this letter therefore, is to submit a Parliamentary Paper on the Beijing Convention and Protocol and copies (*hard and soft*) of the Beijing Convention and Protocol for consideration and approval for ratification.

Yours *Sincerely*



**Nduva Muli, CBS
PRINCIPAL SECRETARY**

PARLIAMENTARY PAPER ON RATIFICATION OF THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION AND THE PROTOCOL SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT



1.0 Background

Kenya is a Contracting State to ICAO having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964. As a Contracting State of ICAO, Kenya has ratified thirty (30) instruments comprising of eleven (11) Conventions and nineteen (19) Protocols relating to civil aviation since it joined the Organization.

Kenya is a signatory to the Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation (Montreal Convention 1971) as amended by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Protocol 1988). Further, Kenya is also a signatory to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970).

Emerging threats including the use of aircraft as weapons and the use of technological means necessitated ICAO to convene a diplomatic conference in Beijing, China in 2010 for purposes of modernizing the Hague Convention of 1970 and the Montreal Convention of 1971 as amended by the Montreal Protocol of 1988 to address these emerging threats to civil aviation security.

The Beijing Convention and the Beijing Protocol 2010 are the result of collective efforts of the international community to modernize the legal framework for aviation security. By criminalizing a number of acts constituting emerging threats against civil aviation, including certain preparatory acts of the offences, it will strengthen the capacity of Kenya to prevent the commission of these offences and to prosecute and punish

those who commit such offences. The Convention and the Protocol will also contribute to the implementation of the United Nations Global Counter-Terrorism Strategy adopted on 8th September 2006 by enhancing the global treaty regime on counter-terrorism.

The Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (Beijing Convention 2010) and the Protocol Supplementary to the Convention on the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010) were opened for signature and ratification on 10th September, 2010.

2.0 Analysis of the Issue

2.1 Objects and Subject Matter of the Convention and the Protocol.

The main object of the Convention and Protocol is to promote aviation security by addressing unlawful acts against civil aviation that may jeopardize the safety and security of persons and property, seriously affect the operations of air services, airports and air navigation facilities. The Convention and Protocol obligates the Contracting States to inter alia undertake to:

- a) Strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;
- b) Enhance the confidence of people in the use of aviation as a means of transport;
- c) To criminalize the use of civil aircraft for purposes of causing death, serious bodily injury or serious damage; of using civil aircraft to release or discharge any biological, chemical or nuclear (BCN) weapon or similar substances to cause death, serious bodily injury or serious damage;

- d) To criminalize the unlawful transport of BCN weapons, related materials or other dangerous materials; and
- e) Provide criminal liability of directors, organizers and financiers of an offence as well as the liability of those who knowingly assist an offender to evade investigation, prosecution or punishment.

2.2 Constitutional implications

- (i) The Convention and Protocol do not propose any amendment to the Constitution of Kenya 2010.
- (ii) The Convention and Protocol are in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

2.3 Impact of the ratification of the Convention and Protocol on national interest, inter alia:-

- a) Enhance safety and security in civil aviation;
- b) Promote passenger and freight air transportation;
- c) Increase trade and tourism; and
- d) Facilitate regional and global integration.

2.4 Obligations imposed on Kenya by the Convention and Protocol

The Convention and Protocol requires the amendment of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol.

2.5. Requirements for implementation of the Convention and Protocol

An amendment of the Protection of the Aircraft Act, Cap 68, of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.6 Policy and legislative considerations

- a) There are no foreseeable policy changes expected from the ratification of the Convention and Protocol.
- b) A review of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.7 Financial Implications

There will be no financial implications of the ratification of the Convention and the Protocol.

2.8 Ministerial Responsibility

The responsibility for the implementation of the Convention and Protocol shall be by the Cabinet Secretary of the Ministry of Transport and Infrastructure.

2.9 Implications on matters relating to Counties

As per the Kenya Constitution 2010, the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

3.0 The summary of the process leading to the adaption of the Convention and Protocol

- 3.1 Following the events of September 11, 2001, Member States and jurisdictions underlined the links between

terrorism, transnational organized crime, the international drug trade and money-laundering, and called on Countries that had not done so to become parties to the relevant international conventions.

- 3.2 On September 8, 2006, the UN General Assembly adopted United Nations Global Counter-Terrorism Strategy under resolution A/RES/60/288 as an instrument that would enhance national, regional and international efforts to counter terrorism. The adoption of the Convention and Protocol is one of the efforts by the civil aviation community of implementing the UN General Assembly's resolution.
- 3.3 The Diplomatic Conference to conclude the Convention and Protocol on aviation security was convened by ICAO and hosted by the Peoples' Republic of China, in Beijing from 30th August, 2010 to 10th September, 2010.
- 3.4 The Diplomatic Conference was convened after several rounds of consultations among the Contracting States under the ICAO Legal Committee on the modernization of ICAO legal instruments related to aviation security.
- 3.5 After two weeks of negotiations the Convention and Protocol were signed on Friday 10th September, 2010 and will enter into force after they have been ratified by 22 States that agree to be bound by their provisions, Nine (9) Contracting States have already signed both the Convention and Protocol.

4.0 The date of signature.

The Convention and Protocol were signed on 10th September, 2010 in Beijing, China.

5.0 The number of States that are party to the Convention and Protocol.

There are nine (9) States that are party to both the Convention and Protocol as of September, 2014. These are: - Cuba, Czech Republic, Dominican Republic, Guyana, Kuwait, Mali, Myanmar, Saint Lucia and Switzerland. Angola is only party to the Convention while Congo is only party to the Protocol.

6.0 The views of the public on the ratification of the Convention and Protocol.

Consultations were held at the East African School of Aviation on 21st May, 2014 and there was general concurrence on the need to ratify the Convention and Protocol.

7.0 Reservation of the Convention and Protocol.

Article 20(3) of the Beijing Convention, 2010 and Article 12 of the Hague Convention, 1970 permits Contracting States to enter reservations relating to dispute resolution by arbitration at the time of signature, ratification, acceptance, approval or accession.

8.0 Proposed text of Reservation to protect or advance national interest and/or conformity with the Constitution.

No proposed reservation.

9.0 Expenditure of public funds to be incurred in the implementation of the Convention and Protocol.

No expenditure is anticipated beyond the normal budgetary provisions.



PROTOCOL

SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

THE STATES PARTIES TO THIS PROTOCOL,

DEEPLY CONCERNED about the worldwide escalation of unlawful acts against civil aviation;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BELIEVING that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the *Convention for the Suppression of Unlawful Seizure of Aircraft* signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (hereinafter referred to as "the Convention").

Article II

Article 1 of the Convention shall be replaced by the following:

"Article 1

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.
2. Any person also commits an offence if that person:
 - (a) makes a threat to commit the offence set forth in paragraph 1 of this Article;
or
 - (b) unlawfully and intentionally causes any person to receive such a threat,
under circumstances which indicate that the threat is credible.

3. Any person also commits an offence if that person:
 - (a) attempts to commit the offence set forth in paragraph 1 of this Article; or
 - (b) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (c) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:
 - (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
 - (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article.”

Article III

Article 2 of the Convention shall be replaced by the following:

“Article 2

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.”

Article IV

The following shall be added as Article 2 *bis* of the Convention:

“Article 2 *bis*

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.”

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

“Article 3

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.”
2. In Article 3, paragraph 3, of the Convention, “registration” shall be replaced by “registry”.
3. In Article 3, paragraph 4, of the Convention, “mentioned” shall be replaced by “set forth”.
4. Article 3, paragraph 5, of the Convention shall be replaced by the following:
“5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft.”

Article VI

The following shall be added as Article 3 *bis* of the Convention:

“Article 3 *bis*

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.”

Article VII

Article 4 of the Convention shall be replaced by the following:

“Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:
 - (a) when the offence is committed in the territory of that State;
 - (b) when the offence is committed against or on board an aircraft registered in that State;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
 - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
 - (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article VIII

Article 5 of the Convention shall be replaced by the following:

“Article 5

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.”

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

“Article 6

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person’s detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.”

Article X

The following shall be added as Article 7 *bis* of the Convention:

“Article 7 *bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.”

Article XI

Article 8 of the Convention shall be replaced by the following:

“Article 8

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.”

Article XII

The following shall be added as Article 8 *bis* of the Convention:

“Article 8 bis

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.”

Article XIII

The following shall be added as Article 8 *ter* of the Convention:

“Article 8 ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.”

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

“Article 9

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander’s control of the aircraft.”

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

“Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases.”

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

“Article 10 *bis*”

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4.”

Article XVII

1. All references in the Convention to “Contracting State” and “Contracting States” shall be replaced by “State Party” and “States Parties” respectively.
2. All references in the Convention to “him” and “his” shall be replaced by “that person” and “that person’s” respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.
3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and
- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.

CONVENTION

on the Suppression of Unlawful Acts Relating to International Civil Aviation

Done at Beijing on 10 September 2010

CONVENTION

sur la répression des actes illicites dirigés contre l'aviation civile internationale

Faite à Beijing le 10 septembre 2010

CONVENIO

para la represión de actos ilícitos relacionados con la aviación civil internacional

Hecho en Beijing el 10 de septiembre de 2010

КОНВЕНЦИЯ

о борьбе с незаконными актами в отношении международной гражданской авиации

Совершена в Пекине 10 сентября 2010 года

制止与国际民用航空有关的非法行为的公约

2010年9月10日订于北京

اتفاقية

قمع الأفعال غير المشروعة المتعلقة بالطيران المدني الدولي

حررت في بيجين في ١٠ سبتمبر/أيلول ٢٠١٠



BEIJING
10 SEPTEMBER 2010

ПЕКИН
10 СЕНТЯБРЯ 2010 ГОДА

BEIJING
10 SEPTEMBRE 2010

北京
2010年9月10日

BEIJING
10 DE SEPTIEMBRE DE 2010

بيجين
١٠ سبتمبر/أيلول ٢٠١٠



CONVENTION

ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION

THE STATES PARTIES TO THIS CONVENTION,

DEEPLY CONCERNED that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BEING CONVINCED that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

- (f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (g) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:
 - (1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
 - (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
 - (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or
 - (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

- (a) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or
- (b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (c) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;
- (c) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;
- (d) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (e) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
- (f) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;
- (g) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (h) "BCN weapon" means:
 - (a) "biological weapons", which are:
 - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (b) “chemical weapons”, which are, together or separately:
 - (i) toxic chemicals and their precursors, except where intended for:
 - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) law enforcement including domestic riot control purposes,
as long as the types and quantities are consistent with such purposes;
 - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;
 - (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).
- (c) nuclear weapons and other nuclear explosive devices.
- (i) “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;
- (j) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable

when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
- (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by

appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.

2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to paragraph 2 of Article 16;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.
4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:
 - (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and
 - (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

- (a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and
- (b) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

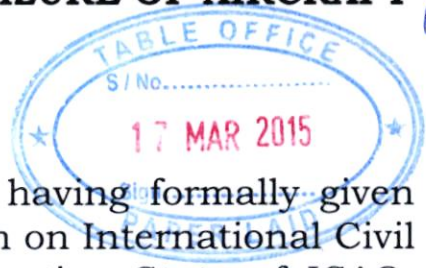
The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

PARLIAMENTARY PAPER ON RATIFICATION OF THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION AND THE PROTOCOL SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

Refer Land
By leader of majority
family
Hon. Atten
Drake
On Tuesday
17/3/2015
LD



1.0 Background

Kenya is a Contracting State to ICAO having formally given notice of its adherence to the Convention on International Civil Aviation on May 1, 1964. As a Contracting State of ICAO, Kenya has ratified thirty (30) instruments comprising of eleven (11) Conventions and nineteen (19) Protocols relating to civil aviation since it joined the Organization.

Kenya is a signatory to the Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation (Montreal Convention 1971) as amended by the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Protocol 1988). Further, Kenya is also a signatory to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention, 1970).

Emerging threats including the use of aircraft as weapons and the use of technological means necessitated ICAO to convene a diplomatic conference in Beijing, China in 2010 for purposes of modernizing the Hague Convention of 1970 and the Montreal Convention of 1971 as amended by the Montreal Protocol of 1988 to address these emerging threats to civil aviation security.

The Beijing Convention and the Beijing Protocol 2010 are the result of collective efforts of the international community to modernize the legal framework for aviation security. By criminalizing a number of acts constituting emerging threats against civil aviation, including certain preparatory acts of the offences, it will strengthen the capacity of Kenya to prevent the commission of these offences and to prosecute and punish

those who commit such offences. The Convention and the Protocol will also contribute to the implementation of the United Nations Global Counter-Terrorism Strategy adopted on 8th September 2006 by enhancing the global treaty regime on counter-terrorism.

The Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (Beijing Convention 2010) and the Protocol Supplementary to the Convention on the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010) were opened for signature and ratification on 10th September, 2010.

2.0 Analysis of the Issue

2.1 Objects and Subject Matter of the Convention and the Protocol.

The main object of the Convention and Protocol is to promote aviation security by addressing unlawful acts against civil aviation that may jeopardize the safety and security of persons and property, seriously affect the operations of air services, airports and air navigation facilities. The Convention and Protocol obligates the Contracting States to inter alia undertake to:

- a) Strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;
- b) Enhance the confidence of people in the use of aviation as a means of transport;
- c) To criminalize the use of civil aircraft for purposes of causing death, serious bodily injury or serious damage; of using civil aircraft to release or discharge any biological, chemical or nuclear (BCN) weapon or similar substances to cause death, serious bodily injury or serious damage;

- d) To criminalize the unlawful transport of BCN weapons, related materials or other dangerous materials; and
- e) Provide criminal liability of directors, organizers and financiers of an offence as well as the liability of those who knowingly assist an offender to evade investigation, prosecution or punishment.

2.2 Constitutional implications

- (i) The Convention and Protocol do not propose any amendment to the Constitution of Kenya 2010.
- (ii) The Convention and Protocol are in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness, interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

2.3 Impact of the ratification of the Convention and Protocol on national interest, inter alia:-

- a) Enhance safety and security in civil aviation;
- b) Promote passenger and freight air transportation;
- c) Increase trade and tourism; and
- d) Facilitate regional and global integration.

2.4 Obligations imposed on Kenya by the Convention and Protocol

The Convention and Protocol requires the amendment of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol.

2.5. Requirements for implementation of the Convention and Protocol

An amendment of the Protection of the Aircraft Act, Cap 68, of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.6 Policy and legislative considerations

- a) There are no foreseeable policy changes expected from the ratification of the Convention and Protocol.
- b) A review of the Protection of the Aircraft Act, Cap 68 of the Laws of Kenya to align it with the provision of the Convention and Protocol is required.

2.7 Financial Implications

There will be no financial implications of the ratification of the Convention and the Protocol.

2.8 Ministerial Responsibility

The responsibility for the implementation of the Convention and Protocol shall be by the Cabinet Secretary of the Ministry of Transport and Infrastructure.

2.9 Implications on matters relating to Counties

As per the Kenya Constitution 2010, the areas of civil aviation and international relations covered by the Convention and Protocol fall under the functions of the National Government. The National Government shall whenever necessary coordinate with the County Governments.

3.0 The summary of the process leading to the adaption of the Convention and Protocol

- 3.1 Following the events of September 11, 2001, Member States and jurisdictions underlined the links between

terrorism, transnational organized crime, the international drug trade and money-laundering, and called on Countries that had not done so to become parties to the relevant international conventions.

- 3.2 On September 8, 2006, the UN General Assembly adopted United Nations Global Counter-Terrorism Strategy under resolution A/RES/60/288 as an instrument that would enhance national, regional and international efforts to counter terrorism. The adoption of the Convention and Protocol is one of the efforts by the civil aviation community of implementing the UN General Assembly's resolution.
- 3.3 The Diplomatic Conference to conclude the Convention and Protocol on aviation security was convened by ICAO and hosted by the Peoples' Republic of China, in Beijing from 30th August, 2010 to 10th September, 2010.
- 3.4 The Diplomatic Conference was convened after several rounds of consultations among the Contracting States under the ICAO Legal Committee on the modernization of ICAO legal instruments related to aviation security.
- 3.5 After two weeks of negotiations the Convention and Protocol were signed on Friday 10th September, 2010 and will enter into force after they have been ratified by 22 States that agree to be bound by their provisions, Nine (9) Contracting States have already signed both the Convention and Protocol.

4.0 The date of signature.

The Convention and Protocol were signed on 10th September, 2010 in Beijing, China.

5.0 The number of States that are party to the Convention and Protocol.

There are nine (9) States that are party to both the Convention and Protocol as of September, 2014. These are: - Cuba, Czech Republic, Dominican Republic, Guyana, Kuwait, Mali, Myanmar, Saint Lucia and Switzerland. Angola is only party to the Convention while Congo is only party to the Protocol.

6.0 The views of the public on the ratification of the Convention and Protocol.

Consultations were held at the East African School of Aviation on 21st May, 2014 and there was general concurrence on the need to ratify the Convention and Protocol.

7.0 Reservation of the Convention and Protocol.

Article 20(3) of the Beijing Convention, 2010 and Article 12 of the Hague Convention, 1970 permits Contracting States to enter reservations relating to dispute resolution by arbitration at the time of signature, ratification, acceptance, approval or accession.

8.0 Proposed text of Reservation to protect or advance national interest and/or conformity with the Constitution.

No proposed reservation.

9.0 Expenditure of public funds to be incurred in the implementation of the Convention and Protocol.

No expenditure is anticipated beyond the normal budgetary provisions.

PROTOCOL

SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

THE STATES PARTIES TO THIS PROTOCOL,

DEEPLY CONCERNED about the worldwide escalation of unlawful acts against civil aviation;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BELIEVING that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the *Convention for the Suppression of Unlawful Seizure of Aircraft* signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

HAVE AGREED AS FOLLOWS:

Article I

This Protocol supplements the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970 (hereinafter referred to as "the Convention").

Article II

Article 1 of the Convention shall be replaced by the following:

"Article 1

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.
2. Any person also commits an offence if that person:
 - (a) makes a threat to commit the offence set forth in paragraph 1 of this Article;
or
 - (b) unlawfully and intentionally causes any person to receive such a threat,
under circumstances which indicate that the threat is credible.

3. Any person also commits an offence if that person:
 - (a) attempts to commit the offence set forth in paragraph 1 of this Article; or
 - (b) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (c) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or
 - (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:
 - (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
 - (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article.”

Article III

Article 2 of the Convention shall be replaced by the following:

“Article 2

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.”

Article IV

The following shall be added as Article 2 *bis* of the Convention:

“Article 2 *bis*

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.”

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

“Article 3

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.”
2. In Article 3, paragraph 3, of the Convention, “registration” shall be replaced by “registry”.
3. In Article 3, paragraph 4, of the Convention, “mentioned” shall be replaced by “set forth”.
4. Article 3, paragraph 5, of the Convention shall be replaced by the following:
“5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft.”

Article VI

The following shall be added as Article 3 *bis* of the Convention:

“Article 3 *bis*

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.
3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.”

Article VII

Article 4 of the Convention shall be replaced by the following:

“Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:
 - (a) when the offence is committed in the territory of that State;
 - (b) when the offence is committed against or on board an aircraft registered in that State;
 - (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
 - (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
 - (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

Article VIII

Article 5 of the Convention shall be replaced by the following:

“Article 5

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.”

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

“Article 6

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person’s detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.”

Article X

The following shall be added as Article 7 *bis* of the Convention:

“Article 7 *bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.”

Article XI

Article 8 of the Convention shall be replaced by the following:

“Article 8

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.”

Article XII

The following shall be added as Article 8 *bis* of the Convention:

“Article 8 bis

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.”

Article XIII

The following shall be added as Article 8 *ter* of the Convention:

“Article 8 ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.”

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

“Article 9

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander’s control of the aircraft.”

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

“Article 10

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases.”

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

“Article 10 *bis*

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4.”

Article XVII

1. All references in the Convention to “Contracting State” and “Contracting States” shall be replaced by “State Party” and “States Parties” respectively.
2. All references in the Convention to “him” and “his” shall be replaced by “that person” and “that person’s” respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.

2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.

3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

- (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and
- (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Protocol shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Protocol.

CONVENTION

on the Suppression of Unlawful Acts Relating to International Civil Aviation

Done at Beijing on 10 September 2010

CONVENTION

sur la répression des actes illicites dirigés contre l'aviation civile internationale

Faite à Beijing le 10 septembre 2010

CONVENIO

para la represión de actos ilícitos relacionados con la aviación civil internacional

Hecho en Beijing el 10 de septiembre de 2010

КОНВЕНЦИЯ

о борьбе с незаконными актами в отношении международной гражданской авиации

Совершена в Пекине 10 сентября 2010 года

制止与国际民用航空有关的非法行为的公约

2010年9月10日订于北京

اتفاقية

قمع الأفعال غير المشروعة المتعلقة بالطيران المدني الدولي

حررت في بيجين في ١٠ سبتمبر/أيلول ٢٠١٠



BEIJING
10 SEPTEMBER 2010

ПЕКИН
10 СЕНТЯБРЯ 2010 ГОДА

BEIJING
10 SEPTEMBRE 2010

北京
2010年9月10日

BEIJING
10 DE SEPTIEMBRE DE 2010

بيجين
١٠ سبتمبر/أيلول ٢٠١٠

CONVENTION

ON THE SUPPRESSION OF UNLAWFUL ACTS RELATING TO INTERNATIONAL CIVIL AVIATION

THE STATES PARTIES TO THIS CONVENTION,

DEEPLY CONCERNED that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

RECOGNIZING that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

BEING CONVINCED that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

HAVE AGREED AS FOLLOWS:

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

- (f) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (g) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (h) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or
- (i) transports, causes to be transported, or facilitates the transport of, on board an aircraft:
 - (1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
 - (2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or
 - (3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or
 - (4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

- (a) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or
- (b) unlawfully and intentionally causes any person to receive such a threat,

under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or
- (b) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (c) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or
- (d) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

- (a) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or
- (b) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:
 - (i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or
 - (ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

- (a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;
- (b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;
- (c) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;
- (d) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;
- (e) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
- (f) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;
- (g) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (h) "BCN weapon" means:
 - (a) "biological weapons", which are:
 - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

- (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
- (b) “chemical weapons”, which are, together or separately:
 - (i) toxic chemicals and their precursors, except where intended for:
 - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) law enforcement including domestic riot control purposes,
as long as the types and quantities are consistent with such purposes;
 - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;
 - (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).
- (c) nuclear weapons and other nuclear explosive devices.
 - (i) “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;
 - (j) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable

when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

- (a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or
- (b) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

- (a) when the offence is committed in the territory of that State;
- (b) when the offence is committed against or on board an aircraft registered in that State;
- (c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (d) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;
- (e) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

- (a) when the offence is committed against a national of that State;
- (b) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.
5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by

appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.
2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to paragraph 2 of Article 16;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 22.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.
3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.
4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:
 - (a) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and
 - (b) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

- (a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and
- (b) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Beijing on the tenth day of September of the year Two Thousand and Ten in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.



D/LαP

3023

MINISTRY OF TRANSPORT & INFRASTRUCTURE

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OFFICE OF THE PRINCIPAL SECRETARY
TRANSCOM BUILDING
NGONG ROAD
P.O. Box 52692 - 00100
NAIROBI

REF: MOT/C/SM/016/3 Vol. VIII (2)

9th March, 2015

Mr. Justin Bundi, CBS
Clerk to the National Assembly
Parliament Building
NAIROBI

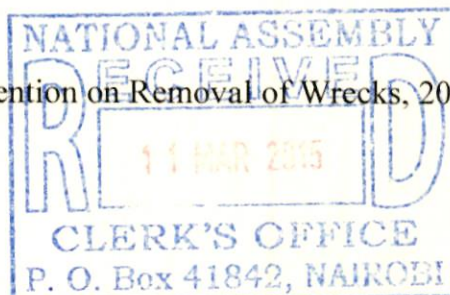
VERY
URGENT

Dear *Mr Bundi*

CABINET MEMORANDUM ON RATIFICATION OF THE INTERNATIONAL MARITIME ORGANIZATION CONVENTIONS AND PROTOCOLS

The Cabinet during the meeting held on 15th January 2015, duly considered and approved for ratification eight (8) International Maritime Conventions and Protocols. The Conventions and Protocols were jointly submitted by the Cabinet Secretary, Ministry of Transport and Infrastructure together with the Cabinet Secretary, Ministry of Foreign Affairs and international Trade and the Attorney General under Cab (14) 147 and consisted of the following:-

- (i) The 1988 Protocol to the Load Lines Convention, 1966.
- (ii) The 1978 Protocol to the Convention on Safety of Life at Sea 1974 (SOLAS 74) which deals with tanker safety and pollution prevention.
- (iii) The Protocol of 1988 to the International Convention for the safety of life at sea, 1974, as amended (SOLAS 74/78).
- (iv) The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
- (v) The Convention on the Limitation of Liability for Maritime Claims 1976 (LLMC 1976.)
- (vi) The 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLM), 1976.
- (vii) The Nairobi International Convention on Removal of Wrecks, 2007



- (viii) The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

To note is:

1. The Government's decision to nominate a Kenyan to vie for the post of Secretary General of the International Maritime Organization. The post was declared vacant in December 2014 and elections on the same will take place in June 2015. Ratification of the said instruments will go along way in enhancing the country's chances of securing the post.
2. The Nairobi International Convention on Removal of Wrecks, 2007 will enter into force on 16th April, 2015. The Convention was adopted in Nairobi, Kenya in 2007, through a Diplomatic Conference and it will be a worthy cause for Kenya to ratify it before its entry into force.

The purpose of this letter is to forward the said Conventions and Protocols to the Departmental Committee of Transport, Public Works and Housing to clear before the final ratification process.

Enclosed are copies of the Conventions/Protocols, and a Parliamentary Paper on the instruments.

Yours

Sincerely



**Nduva Muli, EBS
PRINCIPAL SECRETARY**

- (ii) The Conventions and Protocols are in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness (cooperation), interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

3.3 Impact of the ratification of the Conventions/ Protocols

The listed Conventions will provide global standards for safety and security of ships, life and property at sea and protection of the Marine Environment from pollution by ships within the country's internal waters, territorial sea and the Exclusive Economic Zone (EEZ). National trade facilitation and regional interests in this regard are also in effect safeguarded and the marine environment sustained for future generations.

3.4 Obligations imposed on Kenya by the Conventions/ Protocols

Kenya as a flag state, port state and coastal state is obliged to make laws and policies where necessary to implement the said conventions. The Merchant Shipping Act 2009, the Kenya Maritime Authority Act, 2006 and the draft Marine Pollution Bill, 2014 are meant to implement the Conventions/Protocols.

3.5 Requirements for the Implementation of the Conventions/Protocols and Policy and Legislative Considerations

The requirements have been met since the above laws and the draft Bill of 2014 are intended to implement the said Conventions/protocols. Except amendments where necessary, there are no foreseeable policy changes expected.

3.6 Financial Implications

There are no financial or budgetary implications in ratifying the Convention Protocol. However, implementation will require building of capacity and development and or review of policy and legislation both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority and other agencies.

3.7 Ministerial Responsibility

The responsibility for the implementation of the Conventions/Protocols shall be by the Cabinet Secretary, Ministry of Transport and Infrastructure

3.8 Implications on Matters Relating to Counties

Transport and Communications, including, in particular Marine Navigation is a National Government Function. The Kenya Maritime Authority's mandate of regulator is listed under Schedule Four of the Constitution being the regulation of International and National Shipping and matters related thereto. These functions are enforced through the Merchant Shipping Act of 2009 and are applicable in all counties that have navigable waters. The Marine Pollution Prevention and Control Bill, 2014 is intended to implement Conventions regulating Marine Pollution Prevention.

3.9 The Summary of the process leading to the adoption of IMO Conventions/Protocols

3.9.1 The International Maritime Organization (IMO) is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented. It is mostly involved in adoption of Conventions/instruments in this regard.

3.9.2 IMO has six main bodies concerned with the adoption or implementation of Conventions. The Assembly and Council are the main organs, and the committees involved are the Maritime Safety Committee, Marine

Environment Protection Committee, Legal Committee, Facilitation Committee and the Technical Cooperation Committee.

3.9.3 Normally the suggestion for a new convention or amendments is first made in one of the committees, since these meet more frequently than the main organs. If agreement is reached in the committee, the proposal goes to the Council and then to the Assembly.

3.9.4 If the Assembly or the Council, as the case may be, gives the authorization to proceed with the work on a convention, the committee concerned considers the matter in greater details and ultimately draws up a draft instrument. In some cases the subject may be referred to a specialized sub-committee for detailed consideration. Work in the committees and sub-committees is undertaken by the representatives of the member states of the organization. The views and advice of Intergovernmental and International non-governmental organizations which have a working relationship with IMO are also welcomed in these bodies.

3.9.5 The draft Convention which is agreed upon is reported to the Council and Assembly with a recommendation that a conference be convened to consider the draft for formal adoption. Invitations to attend such a conference are sent to all member states of IMO and to all states which

are members of the United Nations or any of its specialized agencies. Kenya became a member of the IMO on 22nd August, 1973 and currently is a member of the Council. To-date IMO has 170 Member States and three Associate Member States.

3.9.6 The draft Convention is prior to the conference circulated to the participants to discuss and where necessary amendments are made before it is finally adopted by the Conference and deposited with the Secretary General of IMO who sends copies to the Member Governments.

3.9.7 The Convention is opened for signature by states usually for a period of 12 months. Signatories may ratify or accept the Convention while non-signatories may accede.

4.0 The dates of signature and number of States that are party to the listed Conventions

Appendix I to this Cabinet Paper contains the dates of signature where applicable and the number of States that are party to each Convention and Protocol.

5.0 The views of the Public on the ratification of the Conventions and Protocols.

The listed Conventions and Protocols are contained in the Merchant Shipping Act of 2009 and the Marine Pollution Prevention and Control Bill 2014, both of which have been subjected to public participation and received general concurrence for ratification.

6.0 Proposed text of Reservations to protect or advance national interest and/or conformity with the Constitution

There are no proposed reservations by Kenya.

7.0 Expenditure of Public Funds to be incurred in the implementation of the Conventions/Protocol.

No expenditure is anticipated beyond the normal budgetary provisions.



REPUBLIC OF KENYA

BRIEF

ON

PROTOCOL ON DEVELOPMENT AND OPERATION OF THE
STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK
OF THE NORTHERN CORRIDOR INTERGRATION
PROJECTS

BY

MINISTRY OF TRANSPORT AND INFRASTRUCTURE

FEBRUARY 2015

Paper used
By the leader
of majority,
John Duda
Tuesday 10/2/2015



1.0 BACKGROUND

- 1.1 The existing metre gauge railway is on concession to Rift Valley Railways (RVR) for a period of 25 years for freight operations due to come to an end on 30th June, 2031. The railway design and its current state limit its capacity and delivery speed and it cannot therefore meet the future demand for rail transport in the country and the region.
- 1.2 The Government therefore decided to build a new, modern, high capacity Standard Gauge Railway Line between Mombasa and Malaba with a branch line to Kisumu. The railway will be extended to Kampala (Uganda) and Kigali (Rwanda) as pronounced by the three Heads of State for the Republic of Rwanda, Uganda and Kenya on 28th August 2013 and in line with the signed Protocol and Tripartite Agreement. The line will also be extended to Juba following South Sudan accession to the Tripartite Agreement.
- 1.3 The objectives of developing the Standard Gauge Railway is to reduce the cost of doing business in the region and make the region competitive to investment through:
 - i) Reduced freight transportation tariff charges on average by 41.5% per tonne-kilometre;
 - ii) Reduced Transit time by freight trains on average by 26.6%;
 - iii) Increased rail transport share in the Northern corridor;
 - iv) Reduced damage to the roads on the Northern Corridor.
- 1.4 On 3rd August 2012, the Cabinet approved the development of Mombasa-Kampala Standard Gauge Railway with a branch to Kisumu through a Government -to- Government arrangement.
- 1.5 So far, Kenya Railways and China Road & Bridge Corporation (CRBC) have undertaken the Feasibility Study and Preliminary design of Phase 1 (Mombasa to Nairobi section – 485 km) defining the technical parameters

of the civil works, signaling and communication, operating plan as well as operating equipment requirement (locomotives and rolling stock).

- 1.6 Kenya Railways Corporation and China Road & Bridge Corporation (CRBC) signed Commercial Contracts for undertaking Civil Works and for providing Facilities, Locomotives and Rolling Stock on 11th July, 2012 and 4th October, 2012 respectively for Mombasa – Nairobi Section.
- 1.7 As a result, Government of Kenya and EXIM Bank of the Government of the Peoples Republic of China signed Memorandum of Understanding (MOU) on 19th August 2013 and Loan Agreement on 11th May 2014. The construction work has since commenced with a target completion date of October 2017.
- 1.8 The Government has also created a Railway Development Fund supported by a 1.5% levy on the cost of all imports to support the railway development.
- 1.9 To enable development and operationalisation of a Seamless Railway network from Mombasa to Kigali and Juba, the Summit of the Northern Corridor Integration Projects vide the 3rd Joint Communiqué directed the Partner States to develop a Standard Gauge Railway Protocol for the development and operations of the Standard Gauge Railways. The Protocol was signed by Kenya, Uganda, South Sudan and Rwanda in May 2014 and is expected to be ratified before next Summit in February/March 2015.
- 1.10 In order to comply with the Treaty Making and Ratification Act, on public consultations, the Corporation uploaded a copy of the protocol on its website and further caused an advert in the print media in form of a Public Notice to appear on Friday 19th September 2014 and by the expiry of the notice period on 26th September 2014, the Corporation received eleven emails but none of the emails objected to the protocol.

1.11 As a result, the Cabinet during its meeting of 15th January 2015 approved the ratification of the Protocol on Development and Operation of the Standard Gauge Railway. The Ministry of Transport and Infrastructure was therefore directed to submit the Protocol to Parliament for ratification.

2.0 OBJECTS AND SUBJECT MATTER OF THE PROTOCOL

The overall objective is to jointly develop and operate a modern, fast, reliable, efficient and high capacity railway transport system as a seamless single railway operation among the Parties with the specific objectives of:

- a) Expediting economic growth and development of the Parties by reducing the cost of doing business and increase the region's competitiveness;
- b) Enhancing spatial development along the SGR corridor;
- c) Enhancing efficient and cost effective movement of freight and passengers in the region to accelerate trade and services; and
- d) Sustaining development of other transport infrastructure and adopt new technologies to enhance economic development.

3.0 CONSTITUTIONAL IMPLICATIONS

3.1 The Standard Gauge Railway Protocol does not propose any amendment to the Constitution of Kenya 2010. The Protocol is in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness (cooperation), interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

3.2 The implementation of the Protocol will promote constitutional values and objectives through expediting economic growth and development of the country by reducing the cost of doing business and increasing the country's competitiveness which will result in improved welfare of the people of the Republic of Kenya.

4.0 IMPACT OF THE RATIFICATION OF THE PROTOCOL

Harmonisation of the policy, legal and institutional framework for SGR will enhance seamless flow of freight in the region. National trade facilitation and regional interests in this regard are also in effect safeguarded.

5.0 OBLIGATIONS IMPOSED ON KENYA/ REQUIREMENTS FOR THE IMPLEMENTATION OF THE PROTOCOL AND POLICY AND LEGISLATIVE CONSIDERATIONS

5.1 The Government of Kenya entered into an agreement with the Governments of Rwanda, South Sudan and Uganda to build a Standard Gauge Railway connecting the Port of Mombasa to Kampala in Uganda and Kigali in Rwanda and Juba in South Sudan and this will be implemented through the operationalisation of the signed Protocol.

5.2 Following ratification by the Cabinet, the Parliament will therefore need to ratify the Protocol before the next Summit to enable its implementation and facilitate mobilization of resources and development of the remaining railway sections in a manner that will create seamless network.

5.3 To develop the Seamless Railway network as envisaged through the Protocol for the development and Operation of the Standard Gauge Railway, the Kenya will be expected to:

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR;

- b) Adopt a common logical framework of project management;
- c) Adopt agreed common SGR standards;
- d) Cooperate and co-ordinate human resource capacity building strategies;
- e) Cooperate and coordinate in joint mobilisation of financial resources;
- f) Ensure sufficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund;
- g) Undertake joint implementation of any other matter related to SGR inter-parties;
- h) Undertake joint monitoring and evaluation of SGR projects;
- i) Cooperate and coordinate Research and Development and transfer of technology; and
- j) Develop and adopt mechanisms to ensure seamless operations.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The major financial implications relate to the cost of borrowing, construction, purchase of rolling stock/equipment and compulsory land acquisition for the development of the Nairobi-Malaba/Kisumu Section which will be determined through the engineering studies.
- 6.2 The operating costs for operationalisation of the Protocol are minimal and will be met through the day to day budgetary allocation.

6.3 Public funds will be utilized in the implementation of the Protocol as relating to the development of the entire seamless railway network from Mombasa to Malaba/Kisumu.

7.0 MINISTERIAL RESPONSIBILITY

The responsibility for the implementation of the Protocol shall be by the Cabinet Secretary, Ministry of Transport and Infrastructure

8.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

The SGR protocol does not have any implication on matters relating to the counties.

9.0 REQUEST TO THE MEMBERS OF PARLIAMENT

The Members of Parliament are requested to consider and ratify the Protocol for the Development and Management of the Mombasa-Malaba/Kisumu- Kampala/Juba/Kigali Standard Gauge Railway to enable its implementation.

Signed by

.....

**ENG. M. S. M. KAMAU, CBS
CABINET SECRETARY
MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

Date.....



NORTHERN CORRIDOR INTEGRATION PROJECTS

Standard Gauge Railway Protocol

17 FEB 2015

Nairobi, Kenya

May 2014

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STANDARD GAUGE RAILWAY PROTOCOL

A PROTOCOL ON DEVELOPMENT AND OPERATION OF THE STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK OF THE NORTHERN CORRIDOR INTERGRATION PROJECTS

PREAMBLE

WHEREAS the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda (hereinafter referred to as "the Parties"):

HAVING REGARD to the Tripartite Agreement on the creation of the Standard Gauge Railway to address infrastructure development, energy, trade facilitation and regional integration within their countries:

AND WHEREAS the Parties undertook to conclude such protocols as may be necessary in such areas of cooperation, to expedite and facilitate effective implementation:

RECALLING the decision of the 1st Joint Communiqué to undertake the development of the Standard Gauge Railway as a regional project:

RECALLING the decision of the 3rd Joint Communiqué to develop a Standard Gauge Railway Protocol:

CONSIDERING that the objective of development of the Standard Gauge Railway network is to enhance transport infrastructure, trade and regional integration:

NOTING the advantages of cooperation and coordination in the joint development of infrastructure projects to ensure social economic development:

AWARE of their individual obligations and commitments under other regional and international agreements:

The Parties hereby agree as follows:



PART A
INTERPRETATION

Article 1: Interpretation

In this Protocol, except where the context otherwise requires:

- a) "Agreement" means the Tripartite Agreement for the development and operation of the Standard Gauge Railway and any annexes thereto.
- b) "Cooperation" includes the undertaking by the Parties in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Standard Gauge Railway as provided under the Tripartite Agreement.
- c) "Parties" means the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda.
- d) "Protocol" means this Protocol.
- e) "SGR" means Standard Gauge Railway.
- f) "Summit" means the meeting of the Heads of State of the Northern Corridor Integration Projects.
- g) "Northern Corridor" means the transport corridor linking the Great Lakes countries of Burundi, the Democratic Republic of Congo, Rwanda, South Sudan and Uganda to the Kenyan seaports

PART B
DEVELOPMENT OF THE STANDARD GAUGE RAILWAY

Article 2: Objective of the Protocol

(1) The overall objective of the SGR is to jointly develop and operate a modern, fast, reliable, efficient and high capacity railway transport system as a seamless single railway operation among the Parties with the specific objectives of the SGR project as follows:






- a) Expedite economic growth and development of the Parties by reducing the cost of doing business and increase the region's competitiveness.
- b) Enhance spatial development along the SGR corridor.
- c) Enhance efficient and cost effective movement of freight and passengers in the region to accelerate trade and services.
- d) Sustain development of other transport infrastructure and adopt new technologies to enhance economic development.

Article 3: Scope of the Protocol

(1) The provisions of this Protocol shall apply to any activity undertaken in cooperation by the Parties to achieve the objectives in Article 2.

For purposes of paragraph (1) above, the Parties agree to:

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR.
- b) Adopt a common logical framework of project management.
- c) Adopt agreed common SGR standards.
- d) Cooperate and coordinate human resource capacity building strategies.
- e) Cooperate and coordinate in joint mobilisation of financial resources.
- f) Ensure sufficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund.
- g) Undertake joint implementation of any other matter related to SGR inter-parties.
- h) Undertake joint monitoring and evaluation of projects.
- i) Develop and adopt a common communication strategy.
- j) Cooperate and coordinate Research and Development and transfer of technology.



- k) Develop and adopt mechanisms to ensure seamless operations.

PART C

INSTITUTIONAL FRAMEWORK

The decision making organs of this Protocol shall be the Joint Ministerial Committee, the SGR Commission and the Joint Technical Committee.

Article 4: Joint Ministerial Committee

(1) Membership

The Joint Ministerial Committee shall be composed of Ministers responsible for Transport/infrastructure of the Parties.

(2) Functions of the Committee

- a) The Committee shall be the policy organ of the SGR project.
- b) The Committee shall promote, monitor, review, and implement all programmes and projects for the development and operation of SGR.
- c) Consider progress reports of the Commission and prepare reports for the Summit.
- d) Implement the decisions and directives of the Summit as may be addressed to it.
- e) Exercise such other powers and perform such other functions as are vested in or conferred on it by the Tripartite Agreement.

(3) Meetings of the Committee

- a) The Committee shall meet at least once every two months preceding meetings of the Summit.
- b) The Committee may hold extraordinary meetings as and when necessary or at the request of a Party or the Chairperson of the Committee.



- c) The Committee shall determine its own rules of procedure for convening and conduct of meetings.

Article 5: Standard Gauge Railway Commission

(1) Composition

The SGR Commission shall be composed of the Permanent/Principal Secretaries responsible for Transport and/or Infrastructure, the Secretaries to the Treasury and the Solicitors General or their equivalent.

(2) Functions of the Commission

- a) Shall prepare and submit progress reports and recommendations to the Joint Ministerial Committee on the implementation of the SGR project.
- b) Shall receive and consider reports of the Joint Technical Committee and coordinate its activities.
- c) Shall perform any other functions conferred upon it by the Joint Ministerial Committee.

(3) Meetings of the Commission

- a) Subject to the directives that may be given by the Joint Ministerial Committee, the Commission shall meet at least once every two months before the meetings of the Summit.
- b) The Commission may hold extraordinary meetings at the request of the Chairperson.
- c) The Commission shall determine its own rules of procedure for convening meetings and conduct of business.
- d) The Chief Executives of the railway authorities shall be the secretariat.

Article 6: Joint Technical Committee

(1) Composition

The Joint Technical Committee shall be composed of at least three representatives from each Party. ***(2) The Delegation***



The delegation of each party may co-opt other technical staff to participate in the meetings as may be necessary.

(3) Functions

Subject to the directives of the Joint Ministerial Committee, the Joint Technical Committee shall:

- a) Be the technical arm of the Commission and be responsible for the preparation of the SGR project implementation programme.
- b) Submit progress reports and recommendations to the Commission on implementation of the SGR project.
- c) Prepare budget and proposals for mobilisation of funds to implement the SGR project.
- d) Develop strategic plans, monitoring and evaluation framework of the SGR project.
- e) Implement the decisions of the Summit and of the Joint Ministerial Committee.
- f) Do such other matters that may be provided for by the Tripartite Agreement and or the Commission.

(4) Meetings

- a) Subject to any directives that may be given by the Joint Ministerial Committee, the Joint Technical Committee shall meet as often as necessary at least twice before the Summit for the proper discharge of its functions.
- b) The Committee shall determine its own rules of procedure including the convening of meetings and conduct of business.

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PART D

GENERAL PROVISIONS

Article 7: Implementation of this Protocol

(1) The Parties undertake to approximate and/or harmonize their national laws, policies and systems to facilitate implementation of this Protocol.

(2) The provisions of this Protocol shall not affect the rights and obligations of the Parties relating to other international agreements.

(3) The Joint Ministerial Committee shall establish a monitoring and evaluation framework for this Protocol. For purposes of this Article, the Joint Ministerial Committee shall:

- a) ensure regular evaluation of implementation of this Protocol;
- b) regularly assess progress and causes of delays and take appropriate remedial measures; and
- c) give progress reports to the Summit.

(4) The Joint Ministerial Committee shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of the provisions of this Protocol.

(5) The Joint Ministerial Committee shall issue directives for purposes of implementing this Article.

Article 8: Amendments of the Protocol

This Protocol may be amended by the Parties on approval by the Summit.

Article 9: Dispute Settlement

(1) Any dispute between the Parties on interpretation or application of this Protocol shall be resolved amicably by the Parties.

(2) The Parties guarantee that:

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- a) The competent judicial, administrative or legislative authority or any other competent authority, shall rule on the rights of a person who is seeking redress.
- b) The Parties agree that where a third party is aggrieved as result of the application of this Protocol, the party will have recourse to the existing national laws.

Article 10: Accession

(1) Any party interested in joining this Protocol shall apply to the Summit and, on approval, will deposit an instrument of accession with the Parties.

Article 11: Entry into Force

(1) This Protocol shall come into force after execution and ratification/accession by the Parties.

(2) Any Party which ratifies or accedes to this Protocol shall be deemed to be party to the Protocol.

Article 12: Denunciation of the Protocol

(1) Any Party may denounce this Protocol by notification addressed to the Joint Ministerial Committee.

(2) Denunciation shall take effect six months after receipt of the said notification by the Joint Ministerial Committee.

Article 13: Signature of the Protocol


The Protocol shall be signed in multiple copies and shall be deposited with the Parties.

DONE at Nairobi, Kenya on the day of 20 14.

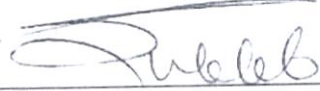


IN WITNESS WHEREOF the undersigned have appended their signatures
hereto:

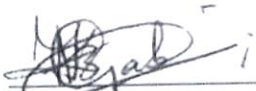
FOR THE REPUBLIC OF KENYA


ENG. MICHAEL M. KAMAU, EBS
CABINET SECRETARY, MINISTRY OF
TRANSPORT AND INFRASTRUCTURE


FOR THE REPUBLIC OF RWANDA


HON. PROF. SILAS LWAKAKAMBA,
MINISTER OF INFRASTRUCTURE

FOR THE REPUBLIC OF UGANDA


HON. ENG. JOHN BYABAGAMBI
MINISTER OF STATE FOR WORKS AND
TRANSPORT (WORKS) UGANDA

FOR THE REPUBLIC OF SOUTH SUDAN


HON. KOUG DANHIER GATLUAK
MINISTER FOR TRANSPORT ROADS &
BRIDGES



MINISTRY OF TRANSPORT AND INFRASTRUCTURE

1.0 THE RATIFICATION OF THE 1988 PROTOCOL TO THE LOAD LINES CONVENTION, 1966

1.1 Background

1.1.1 Kenya became a contracting party to the 1966 Load Lines Convention on 12th September, 1975 but it is yet to ratify the 1988 Protocol amending the Convention. At adoption of the protocol, only 9 member states signed subject to accession/ratification. Kenya has not signed the instrument. The Load Lines Convention was adopted by the International Maritime Organization in London in 1966 through a Diplomatic Conference and entered into force in 1968. The Protocol was adopted in 1988 entering into force in 2000 and it has 98 contracting states.

1.1.2 It has long been recognized that limitations on the draught to which a ship may be loaded make a significant contribution to her safety. These limits are given in the form of free boards, which constitute, besides external weathertight and watertight integrity, the main objective of the Convention.

The Convention sets out rules for calculation and assignment of freeboard and takes into account the potential hazards present in different zones and different seasons. The purpose of the convention's safety measures is to ensure the watertight integrity of ship's hulls below the free board deck.

- 1.1.3 The 1988 Protocol to the Load Lines Convention of 1966 was primarily adopted in order to harmonize the convention's survey and certification requirements with those contained in the Safety of Life at Sea (SOLAS 74/78) Convention and the Marine Pollution Convention of 73/78 (MARPOL).

All three instruments require the issuing of certificates to show that requirements have been met and this has to be done by means of a survey which can involve the ship being out of service for several years. The harmonized system alleviates the problems caused by survey dates and intervals between surveys which do not coincide, so that a ship should no longer have to go to port or repair yard for a survey required by one convention shortly after doing the same thing in connection with another instrument.

The 1988 Load Lines Protocol revised certain regulations in the technical Annexes to the load lines convention and introduced the tacit amendment procedure which was already applicable to the 1974 SOLAS Convention.

1.1.4 The protocol introduced the tacit agreement procedure and therefore reservations are not applicable in ratifying the protocol.

1.1.5 The Loadlines Protocol is provided for in the Merchant Shipping Act, 2009.

Prior to enactment, the public was sensitized on the need for ratification as well as the benefits of the protocol which, amongst others, include ensuring ships and crew safety, protection of the marine environment from pollution by ships resulting from unseaworthiness etc and also reduces the cost involved in surveys which are now harmonized. The public supported ratification of the Protocol.

1.2 Objectives

1.2.1 The main purpose of both the 1966 Convention and its Protocol of 1988 is to establish uniform principles and rules with respect to the limits to which ships on international voyages may be loaded having regard to the need for safeguarding life and property at sea.

1.2.2 The 1988 Load Lines Protocol harmonizes the Conventions survey and certification requirement with those contained in SOLAS 74/78 and MARPOL 73/78. Hence facilitating implementation of the three instruments by contracting parties.

1.2.3 The harmonized system resolves the problems caused by survey dates and intervals between surveys which do not coincide. A ship

therefore does not have to go to a port or repair yard for a survey as required by one convention shortly after going through the same process in connection with another instrument.

1.3 Justification

1.3.1 When ratified and implemented, the 1988 Protocol of the Load Lines Convention will enhance Kenya Maritime Authority's powers to conduct Port State Control functions and render our coastline free from unseaworthy ships among others.

1.3.2 Enhanced safety of life, property and protection of the marine environment in connection with ships on international voyages calling at Kenyan Ports will be achieved.

1.3.3 The country's opportunity to earn revenue from future ship surveys and certification as well as develop related capacity will be ensured.

1.3.4 The country will benefit from the International Maritime Organization's Technical Co-operation Programme and other development partners who assist developing countries to develop capacity for implementation and enforcement purposes.

1.4 Financial Obligation

1.4.1 There are no financial or budgetary implications in ratifying the Load Lines Convention Protocol of 1988. However, implementation will require building of capacity and

development and or review of policy of legislation both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority and other agencies.

2.0 THE RATIFICATION OF THE 1978 PROTOCOL TO THE 1974 SAFETY OF LIFE AT SEA (SOLAS) CONVENTION (SOLAS 78 PROTOCOL)

2.1 Background

2.1.1 The SOLAS Convention is generally regarded as the most important of all international treaties concerning the safety of life and property at sea.

2.1.2 The origin of SOLAS goes back to 1914 in response to the Titanic disaster, following which various amendments were considered until 1974 when a complete new Convention was adopted by International Maritime Organization.

2.1.3 Kenya is a Contracting Party to the 1974 SOLAS, effective 21st October, 1999. However, it is yet to ratify the Convention's Protocol of 1978. The 1978 Protocol entered into force in 1981 and has 119 contracting states to-date. 11 member states excluding Kenya signed the Protocol during its adoption.

2.1.4 The 1974 Convention has been updated and amended on numerous occasions to cater for various safety issues in the rapidly evolving technology based shipping industry.

2.1.5 The 1978 Protocol was adopted at the International Conference on Tanker Safety and Pollution Prevention which was convened in response to a spate of tanker accidents during 1976 to 1977.

The Conference adopted measures affecting tanker design and operation.

The protocol introduced the tacit agreement procedure and therefore reservations are not applicable in ratifying the protocol.

2.1.6 The 1978 Solas Protocol is provided for in the Merchant Shipping Act, 2009. Prior to enactment, the public was sensitized on the need for ratification as well as the benefits of the protocol which, amongst others, include ensuring ships and crew safety, protection of the marine environment from pollution by ships which may result from unseaworthiness of ships. It will strengthen Kenya's port state control inspection measures to ensure unseaworthy vessels do not call at our ports. The surveys and inspections enhance revenue generation for the country. The public stakeholders supported ratification of the Protocol.

2.3 Objectives

2.3.1 The 1978 SOLAS Protocol made important changes to Chapter 1 of SOLAS 74 by introducing unscheduled inspections and/or mandatory annual surveys thus strengthening of port state control requirements.

This ensures seaworthiness requirements particularly when port state control inspection such as those undertaken by Kenya Maritime Authority (KMA) is enforced.

The importance of this Protocol to the country cannot be underestimated as it is estimated that about fifty ships of various types are in the major shipping lanes off the coast of Kenya at any given time. Of these, approximately nine are oil tankers whose risks to the marine environment in case of oil spill are enormous. Hence the need to ratify the 1978 SOLAS protocol.

2.3.2 Under the Protocol, new crude oil carriers and product carriers of 20,000 deadweight (dwt) and above are required to be fitted with an inert gas system that is required when crude oil washing is undertaken to avoid explosion due to chemical reactions.

2.3.3 All ships of 10,000 gross tonnage and above are to be fitted with two radars, two remote steering gear control systems with the main steering gear of new tankers having two or more identical power units.

This ensures safe operation of the tankers, hence prevention of marine pollution from ships.

2.4 Justification

- 2.4.1 When ratified and implemented, the 1978 SOLAS Protocol will enhance Kenya Maritime Authority's powers to conduct port state control especially on tankers and render our coastline free from unseaworthy ships.
- 2.4.2 There will be enhanced safety of life, property and prevention of marine pollution from ships on international voyages calling at Kenyan ports.
- 2.4.3 The country's opportunity to earn revenue from future ship surveys and certification as well as develop related capacity will be ensured.
- 2.4.4 The country will benefit from the International Maritime Organization's Technical Cooperation Programme and other development partners who assist developing countries to develop capacity for implementation and enforcement purposes.
- 2.4.5 Kenya's maritime zones lie on a busy shipping route plied by large oil tankers from Middle East to Europe and America. Any oil spill would be a disaster to these maritime zones.
- 2.4.6 Many aquaculture activities take place along Kenya's coastline, for example, tourist beach hotels, fishing, off-shore marine parks, and

existence of coral reefs, archipelagos, mangroves and sandbanks. Ratification of the SOLAS 78 protocol would ensure protection of all these foreign exchange earning activities from unforeseeable tanker oil spill.

2.5 Financial and Budgetary Implications

2.5.1 There are no financial and budgetary implications on the ratification of this Protocol. However, implementation will require building of capacity and development and or review of policy and legislation both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.

3.0 THE RATIFICATION OF THE PROTOCOL OF 1988 RELATING TO THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

3.1 Background

3.1.1 This SOLAS Protocol introduced a new coordinated system of surveys and certification. It Harmonized Ship Survey and Certification (HSSC) as provided in the Loadlines 1966 Convention and MARPOL 73/78 as well as with various codes dealing with construction and equipment of ships carrying dangerous chemicals in bulk.

3.1.2 Kenya is party to the International conventions on safety of Life at Sea 1974. (SOLAS 74), MARPOL 73/78 and the

International Convention on Loadlines 1966 and therefore there is need to ratify the protocol so as to benefit from the changes brought about by the same.

The 1988 SOLAS protocol entered into force in 2000 and has 105 contracting states. 9 member states signed the protocol subject to ratification. Kenya did not sign it. The protocol introduced the tacit agreement procedure and therefore reservations are not applicable in ratifying the protocol.

3.1.3 The Solas Protocol is provided for in the Merchant Shipping Act, 2009. Prior to enactment, the public was sensitized on the need for ratification as well as the benefits of the protocol which, amongst others, include ensuring ships and crew safety, protection of the marine environment from pollution by ships which may result from unseaworthiness of ships. It will strengthen Kenya's port state control inspection measurers to ensure unseaworthy vessels do not call at our ports. The surveys and inspections enhance revenue generation for the country. The public stakeholders supported ratification of the Protocol.

3.2 Objective

3.2.1 The aim of the 1988 Protocol is to alleviate problems caused by the fact that as requirements in the three instruments vary. Ships may be obliged to go into dry-dock for a survey required by one convention shortly after being surveyed in connection with another. By enabling the required surveys to be carried out at

the same time, the system will reduce costs for ship Owners and Administrations, namely Kenya Maritime Authority in carrying out Port State Control activities.

8.2.2 Surveys would now be carried out at the same time.

3.3 Justification

3.3.1 The Harmonized System of Survey and Certification (HSSC) simplifies the survey and certification process thus reducing time and money spent by the Kenya's Surveyors on the process.

3.3.2 There will be flexibility on survey schedules thus benefiting the ship owners by allowing them ample time to do business.

3.3.3 Vessel owners will be able to receive their certificates of inspection (both SOLAS and Loadlines certificates) simultaneously thus reducing costs for ship owners and administrations alike.

3.3.4 The system encourages ship owners to register their ships in Kenya due to decreased costs associated with statutory compliance. This will earn Kenya Foreign-exchange required for development.

3.3.5 There will be a favourable increase in Kenya's tonnage and further increase revenue to the Government in terms of the annual fees so earned.

3.4 Financial and Budgetary Implications

3.4.1 There are no financial and budgetary implications on the ratification of this Protocol. However, implementation will require building of capacity and development and or review of policy and legislation both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.

4.0 THE RATIFICATION OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001

4.1 Background

4.1.1 The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention) was adopted by an International Conference held during the IMO Legal Committee meeting on 23rd March, 2001. 11 member states excluding Kenya signed the Convention during its adoption. To-date 77 contracting states have ratified. The driving force for the development of the Bunkers Convention was the realization by many countries that bunker spills were causing significant damage and there was no orderly international regime to insure coverage or to establish limits. The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The

Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties.

4.1.2 The Convention is modeled after the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969, as amended by the 1992 Protocol, but is not applicable to oil tankers and vessels transporting 2000 DWT of persistent oils as cargo, the bunkers from which are already covered by the CLC. As with the CLC Convention, a key requirement in the Bunkers Convention is the need for the registered owner of a vessel to maintain compulsory insurance cover.

4.1.3 Another key provision is the requirement for direct action. This would allow a claim for compensation for pollution damage to be brought directly against an insurer. The Convention requires ships over 1,000 gross registered tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial Institution to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, as amended by the Protocol of 1996.

4.1.4 The Bunkers Convention provides a free-standing instrument covering pollution damage. "Pollution damage" under the Convention means:

loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever

such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

The costs of preventive measures and further loss or damage caused by preventive measures.

- 4.1.5 Unlike the CLC Convention and the Hazardous and Noxious Substances (HNS) Conventions, there is no funding mechanism established or administered as part of the Bunkers Convention. Rather, it relies on the premise that most ships already have adequate P & I coverage in excess of the limits specified in the Convention.

4.2 Objective

- 4.2.1 The aim of the Bunkers Convention is to improve the process by which claimants are able to recover costs incurred as a result of pollution from ships' bunker fuel oils, whether in responding to a bunker pollution incident or as a result of damage caused by bunker oil pollution. The Bunkers Convention will help to achieve this by:
- 4.2.1 Establishing a strict liability regime on the ship-owner for pollution damage arising from all types of oil used in the operation or propulsion of ships (i.e. the ship-owner is liable regardless of fault);
- 4.2.1 Requiring all registered owners of vessels over 1,000 gross tonnes entering or leaving a Kenyan Port or terminal to maintain insurance certified by the State to meet their liability; and

4.2.1 Introducing a provision that entitles claimants to sue ships' insurers via the right of direct action.

4.2.1 Allowing claims to be pursued in the State in which the damage occurred. This makes it much easier for victims to pursue a claim for cost recovery.

4.3 Justification

4.3.1 The Convention has clear benefits to Kenya's maritime industry as cited below;

4.2.2 A registered owner's liability for pollution damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, would be limited to costs of reasonable measures of reinstatement of the impairment to the environment actually undertaken or to be undertaken.

4.2.3 Insurers would be more inclined to provide the coverage knowing that there are defined limits to liability claims made upon them.

4.2.4 The Convention would provide protection for Kenya through a regularized and certain regime.

- 4.2.5 The International Maritime Organization technical cooperation assistance is provided to facilitate countries which need to develop implementation instruments for effective implementation and enforcement of the convention in accordance with a resolution adopted.
- 4.2.6 Ratification and subsequent implementation of the convention will create a national legal framework to empower the contracting State to control and manage damage from spills from ships' bunkers to the marine and coastal environment.
- 4.2.7 Victims of bunker oil pollution, including local fishing and tourism industries, are less likely to suffer financial hardship as a result of improved cost recovery provisions.
- 4.2.8 Upon implementation in Kenya, anyone who suffers damage as a result of bunker oil pollution, or the threat of such pollution, will obtain adequate compensation and also benefit anyone likely to be affected by a bunker oil incident including individuals, businesses such as local fishing and tourism industries, local authorities and the Government.

4.3 Financial Obligations

There are no financial/budgetary implications in ratifying the Convention. However, implementation will require building of capacity and development of regulations both of which are ongoing programmes in the Ministry and its agencies. Required funds are

budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.

5.0 THE RATIFICATION OF THE CONVENTION ON THE LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 (LLMC 1976)

5.1 Background

5.1.1 Kenya as a coastal state depends on shipping as 95% of its international trade is transported by sea and therefore effective regulation of international and domestic shipping directly impacts on its economy.

5.1.2 The LLMC 1976 was adopted on 19th November 1976 and entered into force on 1st December 1986. It has 8 signatories excluding Kenya and 54 contracting states. The Convention replaces the International Convention relating to the limitation of the liability of owners of Seagoing Ships, which was signed in Brussels in 1957 and came into force in 1968. The LLMC Convention 1976 raises the limit of liability for claims covered in some cases up to 250-300 per cent. Limits are specified for two types of claims – claims for loss of life or personal injury, and property claims. The convention establishes uniform rules relating to the limitation of liability for maritime claims. The claims include those of loss of life or personal injury and loss or damage to property, occurring on board or in connection with operations of ship or salvage operations including damage to other ships, property, harbor works and waterways amongst others.

5.1.2 The convention safeguards interests of both the ship owners and potential claimants by providing greater certainty in the event of a claim.

5.1.3 Kenya is not signatory to the LLMC 1976 convention and therefore seeks to ratify it.

The Convention is incorporated in the Marine Pollution Prevention and Control Bill, 2014.

5.2 Objective

5.2.1 The Convention aims at providing manageable liability regime for maritime claims. Under the convention, the ship-owner's liability limit is based on the size of the ship. Large ships carrying more passengers or large quantities of cargo carry higher liability than small ships.

5.3 Justification

5.3.1 When ratified and implemented, it will help to safeguard the interests of the shipping community, ship owners and insurers in particular and provide certainty to the outcome of the compensation regime.

5.3.2 Kenya will be in line with the globally accepted liability limits that are agreed and prescribed and therefore putting claimants in our jurisdiction at an advantage in any action against a ship owner for loss or damage occasioned by a ship.

5.3.3 As a trading nation that imports and exports large quantities of cargo by sea, Kenya obtains economic benefits from the universal rules of law established. The international rules promote commerce and trade by standardizing regulations and requirements of ships in the ports they visit.

5.3.4 The country will benefit from the International Maritime Organization's Technical Co-operation Programmes and from other development partners who assist developing countries to develop capacity for implementation and enforcement purposes.

5.4 Financial Obligation

5.4.1 There are no financial or budgetary implications in ratifying the Convention on the Limitation of Liability for Maritime Claims 1976. However, implementation will require building of capacity and development of regulations both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.

6.0 THE RATIFICATION OF THE 1996 PROTOCOL TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS (LLM), 1976

6.1 Background

6.1.1 The protocol of 1996 which entered into force in 2004 increases the amount of compensation payable in the event of an incident and also introduces a "tacit acceptance" procedure for updating these amounts.

6.2 Objectives

- 6.2.1 The main purpose of the 1996 LLMC protocol is to increase compensation in the event of an incident.
- 6.2.2 To introduce a “tacit acceptance” procedure for updating the amounts. The protocol was signed by 9 member states excluding Kenya and to-date 49 States have ratified it.

6.3 Justification

- 6.3.1 When ratified and implemented, the 1996 LLMC protocol will enable Kenyans who are importers to draw increased amounts in compensation in case of an incident where their property is lost in the sea. Compensation will be 1 million SDR (US \$ 1.586 Million) in a ship not exceeding 2,000 gross tonnage.
- 6.3.2 Kenyans who serve in the ships as seafarers would be highly compensated in case of personal injury or loss of life.

They will be able to earn 2 Million SDR equivalent to US \$ 3.17 Million if they were serving in a ship whose gross tonnage does not exceed 2,000.

6.4 Financial Obligation

There are no financial or budgetary implications in ratifying the 1996 LLMC protocol. However, implementation will require building of capacity and development of regulations both of which are ongoing

programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.

7.0. THE RATIFICATION OF THE NAIROBI INTERNATIONAL CONVENTION ON REMOVAL OF WRECKS, 2007

7.1 Background

7.1.1 Kenya became a member of the International Maritime Organization (IMO) in 1973. It has since ratified several international Conventions. The International Convention on Removal of Wrecks 2007 was adopted by a five day Diplomatic Conference held at the United Nations Office in Nairobi (UNON) on 18th May 2007. Kenya signed the Convention on the date of adoption. The Convention to-date has 11 contracting states and it is scheduled to enter into force in April 2015 having met the entry into force requirement of 10 contracting states.

7.1.2 The Convention provides an international legal framework by providing a set of unified international rules aimed at ensuring prompt and effective removal of wrecks located beyond the territorial sea.

7.1.3 The Convention's provisions contain a clause enabling State parties to apply certain provisions to their territory and territorial sea. Though marine casualties have decreased in recent years, there are a big number of abandoned marine wrecks that have posed big challenges to Coastal States and shipping. This can be from wreck being a hazard to navigation, its potential to cause damage to the marine/coastal

environment and the costly issue of marking and removing hazardous wrecks.

7.1.4 Wreck is a ship or any part of a ship or object that has been on board a ship but has become detached e.g. cargo that as a consequence of a maritime casualty has sunk or stranded or is adrift.

7.1.5 The new Convention provides a sound legal basis for Coastal States to remove or have a hazard removed from their coastlines, wrecks which pose a hazard to the safety of navigation or to the marine and coastal environments or both environments. It will make ship owners financially liable and require them to take out insurance or provide other financial security to cover the costs of wreck removal. It will also provide states with a right of direct action against insurers.

The public have been sensitized on the Convention under the Merchant Shipping Act of 2009.

7.2 Objectives

7.2.1 The Nairobi International Convention on Removal of wreck's main objective is to;

7.2.2 Provide an international legal framework aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea.

7.2.3 To enable State parties apply certain provisions to their territory including the territorial sea.

7.2.4 Alleviate the problems caused to Coastal States by the increasing number of wrecks worldwide which are estimated to be thirteen hundred.

7.3 Justification

7.3.1 The Convention has clear benefits to Kenya's maritime industry and Kenya's ratification will indicate her lead role since the Convention was adopted in Nairobi, Kenya.

7.3.2 The International Maritime Organization technical cooperation assistance is provided to facilitate countries which need to develop implementation instruments for effective implementation and enforcement of the Convention in accordance with a resolution adopted during the Nairobi International Convention on Removal of Wrecks, 2007.

7.3.3 Ratification and subsequent implementation of the Convention will create a legal framework on the removal of wrecks in our waters. This will empower the country to control and manage wrecks with a view to eliminate hazards that damage the marine and coastal environment as well as shipping.

7.3.4 It also proposes guidelines that will enable Member States to enforce regulations on locating and marking wrecks, as well as determining the liabilities of responsible parties in removing the hazardous wrecks and materials.

- 7.3.5 Would lead to better maritime safety, reduction in the costs and risks to maritime transport, and better protection of the global maritime environment.
- 7.3.6 Prevent marine pollution of Kenya's territorial waters especially the port areas, marinas, moorings and areas of high ship traffic.
- 7.3.7 Kenya will benefit from international programs aimed at eliminating the problem through implementing unified provisions and regulations.
- 7.3.8 Ship owners will be made financially liable and make them take insurance. On the other hand, removal of wrecks will make it easier for costing of the cargo which was in the ship for compensation purpose from insurers.
- 7.3.9 Tourism industry including hotels, fisheries etc will thrive in free pollution environment.

7.4 Financial Obligations

- 7.4.1 There are no financial/budgetary implications in ratifying the Convention. However, implementation will require building of capacity and development of regulations both of which are ongoing programmes in the Ministry and its agencies and on review and policy of legislation both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted by the Ministry, Kenya Maritime Authority and other agencies.

8.0 THE RATIFICATION OF THE INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS, 2001

8.1 Background

8.1.1 The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 was adopted at an International Diplomatic Conference at the International Maritime Organization Headquarters in London on 5th October, 2001. It came into force on 17th September, 2008. Kenya as a Port State needs to ratify the Anti-fouling Systems Convention as a big number of ships call our ports and some of them have paint coats that endanger our marine environment.

The Convention was signed by 8 Member States at adoption. To-date it has 68 contracting Member States whose combined merchant fleet is approximately 83.2% of gross tonnage of world merchant fleet.

8.1.2 The Convention requirements forbid application of anti-fouling coatings to new and existing ships, fixed and floating platforms, floating productions and/or storage units, regardless of size after January 2003. It will also reduce/eliminate any risk to the marine environment, human health, marine life and resources from the use of compounds that contain harmful anti-fouling systems. Ships required to comply with the requirements of the Convention since January 2008.

8.1.3 Anti-fouling systems are a coating, paint, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms. The anti-fouling paints are used to coat the

bottoms of ships to prevent sea life such as algae and molasses attaching themselves to the hull, thereby slowing down the ship and increasing fuel consumption. Anti-fouling paints replaced lime, later arsenical and mercurical compounds and pesticides which were used in the past as anti-fouling systems, but have proved to persist in the water killing sea life, harming the environment and possibly entering the food chain.

The Convention is incorporated in the Merchant Shipping Act, 2009 as it provides enforcement mechanism for Port State Control Surveys and Inspections amongst others.

8.2 Objectives

The Anti-Fouling Systems 2001 Convention's main objective is to;

- 8.2.1 Prohibit the use of harmful compounds in anti-fouling paints used on ships.
- 8.2.2 Establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.
- 8.2.3 Encourage contracting Parties to the Convention to have national laws that prohibit and restrict the use of harmful anti-fouling systems on ships flying their flag, as well as foreign ships not entitled to fly their flag but which operate under their jurisdiction.

8.3 Benefits

- 8.3.1 The International Maritime Organization technical cooperation assistance is provided to facilitate countries which need to develop implementation instruments and introduce other measures including training of personnel, for effective implementation and enforcement of the Convention.
- 8.3.2 Ships expected to operate with a clean hull that is non-threatening to the environment.
- 8.3.3 Use of environment friendly Anti-fouling Systems will enhance reduction of air pollution from sulphur oxide and nitrogen oxide emissions from ship exhausts as well as ozone depleting substances.
- 8.3.4 Use of clean Anti-fouling Systems will prevent marine pollution of Kenya's territorial waters especially the port areas, marinas, moorings and areas of high ship traffic.
- 8.3.5 Kenya will benefit from international programs aimed at eliminating the problem through implementing unified provisions and regulations.
- 8.3.6 Tourism industry including hotels, fisheries etc will thrive in free pollution.
- 8.3.7 Use of Anti-fouling Systems by ships with clean hulls will ensure fuel consumption efficiency.

8.4 Financial Obligations

8.4.1 There are no financial or budgetary implications in ratifying the Convention on the Limitation of Liability for Maritime Claims 1976. However, implementation will require building of capacity and development of regulations both of which are ongoing programmes in the Ministry and its agencies. Required funds are budgeted for by the Ministry, Kenya Maritime Authority, Kenya Ports Authority and other agencies.



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Paper laid
By leader
July 2015
17/2/15

REPUBLIC OF KENYA

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

CABINET MEMORANDUM ON RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT



A. OBJECTIVE OF THE MEMORANDUM

The purpose of this Cabinet Memorandum is to apprise the Cabinet on Kenya's participation in regional peace and security under the Mutual Peace and Security Pact of the Northern Corridor Integration Projects and to seek approval for Kenya to ratify the Mutual Peace and Security Pact, hereinafter referred to as the Pact.

B. THE BACKGROUND OF THE SUBJECT MATTER

The Pact was drafted in line with the Heads of State of Partner States (Kenya, Rwanda and Uganda) in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 which they incorporated an article on security cooperation in its paragraph 'j' of the Kigali communiqué and Articles 8 and 9 of Memorandum of Understanding on the Tripartite Initiative for fast tracking the East Africa Integration. Article 8 on common defense established the Defense Pact and Article 9 on security established the Mutual Peace and Security Pact.

Pursuant to the directives of the Heads of State at the Kigali Summit of 28th October 2013, the Partner States subjected the Pact to the following process before its conclusion:

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- i. The delegates of Experts that comprised of representative from the Republic of Kenya, the Republic of Rwanda and the Republic of Uganda developed two working drafts on the Mutual Peace and Security Pact and Defense Pact.
- ii. The Experts Working Group and the Chiefs of Defense Staff and Inspectors Generals of the Police met from the 6th- 7th January 2014 in Kigali Rwanda to implement the decision on the establishment of a Mutual Defense Pact and the Mutual Peace and Security Pact that Partner States were to sign by the end of January 2014.
- iii. The relevant senior officials from each of the Partner States considered the various drafts and subsequently forwarded to the Council of Ministers for consideration and submission to the 4th Northern Corridor Integration Projects Summit which signed the Pact on 20th February 2014.
- iv. The 4th Summit of the Northern Corridor Integration Projects held on 20th February 2014, Kampala, Uganda and 5th Summit held on 2nd May 2014 in Nairobi, Kenya directed the Partner States to subject the Pact to respective ratification process and fast track the development of Pact implementation framework and matrix. The Pact shall enter into force six (6) months after the date of signature, that is, by **24th August, 2014**.
- v. Joint Defense, Peace and Security Experts, Chiefs of Defense Staff/Force and Ministers responsible with National Police/Security met from 26th to 30th May 2014 in Kigali Rwanda and developed an implementation Framework and Matrix of the Defense, Peace and Security Pacts.
- vi. Pursuant to meeting of Chiefs of Services held in Kigali, Rwanda, on 26th -30th May 2014 to develop organs, structures and the framework for the implementation of the Mutual Peace and Security Pact, the Council of Ministers for the Peace and Security cluster of the Northern Corridor Integration Projects

from the Partner States convened for a consultative meeting in Nairobi, Kenya, on 23rd June 2014 to assess progress made on the implementation of the Pact.

- vii. The 6th Northern Corridor Integration Projects Summit held in Kigali, Rwanda from 29th June 2014 to 3rd July 2014 was preceded by Senior Officials and Ministers Meetings that developed the Pact Implementation Framework and Matrix.
- viii. The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 requires Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the Ministry of Interior and Coordination of National Government organized for stakeholder forum to seek their views as well as that of the public through electronic and print media.

C. ANALYSIS OF THE PROBLEM

a. Objects and subject matter of the Pact

The purpose of the Pact is to establish a framework for combating crimes towards collective peace and security among Partner States. Partner States according to the Pact are obligated to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the Partner States against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the Partner States;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Enhance the capacity of the Partner States in combating terrorism and piracy;

- v. Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.
- vi. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States

b. Constitutional implications

The Pact proposes no amendments to the Constitution of Kenya.

c. Impact of the ratification of the Pact on national interest

The preamble of the Pact informs the Partner States that the Pact will unite the Partner States' efforts towards collective peace and security, and the preservation of peace, security and stability.

Pact will create a framework that encourages and maintains cooperation and consultations on issues pertaining to the peace and security of the Partner states with a view of prevention, better management and resolution of disputes and conflicts between them.

The 4th Summit urged the Partner States to subject the Pact to respective ratification process and it shall enter into force six (6) months after the date of signature, that is, by **24th August 2014**.

To this end, the Pact (Article 3 (3)) will commit the Government to develop appropriate mechanisms, strategies and programs to combat cross border crime as follows:

- i. Conflict prevention, management and resolution
- ii. Combating terrorism
- iii. Establishment of Fusion Centers
- iv. Establishment of database on cross border crimes
- v. Harmonizing national legislations

u. Obligations imposed on Kenya by the Pact

Article 2(6) of the constitution makes any treaty or convention ratified by Kenya shall form part of the law of Kenya.

e. Requirements for implementation of the Pact

Article 14 of the Pact provides that the relevant authorities including other National Security Services such as Correctional, Immigration and Intelligence Services are to develop such organs, structures and policies as shall be necessary for the implementation of this Pact by 30th March 2014 for subsequent approval by the Committee of Ministers for onward transmission to the Summit.

In reference to Article 14 and 19 of the Mutual Peace and Security and Defense Pact respectively, Joint Defense, Peace and Security Experts, Chiefs of Defense Staff/Force and Ministers responsible with National Police/Security met from 26th to 30th May 2014 in Kigali Rwanda and developed an implementation Framework and Matrix of the Defense, Peace and Security Pacts.

The 6th Northern Corridor Integration Projects Summit held in Kigali, Rwanda on 3rd July 2014 approved the Mutual Peace and Security Pact Implementation Framework and Matrix (**ANNEX 1**).

f. Policy and legislative considerations

To realize the objectives of the Pact, Partner States in Article 3 (3), Article 4 (2) and Article 5 agree to undertake measures to:

- i. Enhance cooperation in training and development;
- ii. Harmonize visa regulations to guide the issuance of single tourist visa;
- iii. Harmonize national legislations
- iv. Establish database on cross border crimes
- v. Fast track identified centers of excellence in policing

g. Ministerial responsibility

The responsibility for the implementation of the Pact shall be by Cabinet Secretary responsible for, internal security, disaster management, refugee affairs, immigration affairs, prisons, probation and after care services, peace building and conflict management, children affairs, registrar of motor vehicles, marine services, and any other area of cooperation that may be agreed by consensus of the Partner States to be included in the Northern Corridor Integration Projects.

h. Implications on matters relating to counties

As per the Constitution, the areas of cooperation covered by the Pact fall under the functions of the national government. The national government shall therefore coordinate with the county government as and when necessary.

i. Date of signature

The Pact was signed on 20th February, 2014 in Kampala, Uganda during the 4th Northern Corridor Integration Projects Summit.

j. The number of states party to the Pact

Three states are currently party to the Pact namely, Republics of Kenya, Rwanda and Uganda. Article 8 on Accession states that this Pact shall remain open for accession by any State as shall be approved by the Partner States through the policy organs from time to time.

k. Views of the public on the ratification of the Pact

The Ministry invited the views of the public by publishing the Pact in two electronic and print media on Thursday 10th July 2014 (People Daily) and Friday 11th July 2014 (Nation Daily). The Ministry also convened a public forum at the Utalii Hotel on 15th July, 2014 where it received the views of the public and relevant stakeholders. The same are contained in the enclosed report (*REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC*

PARTICIPATION PROCESS ON THE RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT DATED 22ND JULY 2014)

l. Provision for reservations and recommendations

The Protocol has no provision for reservations.

m. Reservations/ declarations to align with national interests/ constitution

No Pact provision applies in this regard.

n. Use of public funds in the implementation of the Pact

The implementation of the Pact will involve the use of public funds by the relevant departments and agencies involved in the implementation. The estimated cost of expenditure may not be apparent at the moment.

D. FINANCIAL IMPLICATIONS

The implementation of the Pact in the short term is not envisaged to have any major financial implications save for greater emphasis on the regional dimension to the functions and responsibilities during the budgeting process by the relevant Departments and agencies.

In addition, whilst the existing government agencies will carry on with implementation of the Pact, the obligations arising from the Pact will call for additional allocation of resources from Partner States. Currently, much of these resources are mainly dependent on development partners.


E. RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:

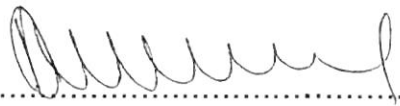
- (i) Note the contents of the Cabinet Memorandum
- (ii) Consider and approve the ratification of the Pact

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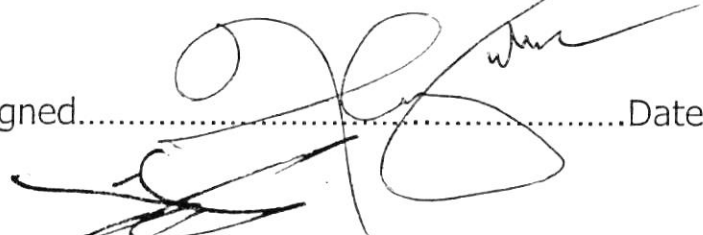
Cabinet Secretary for Interior and Coordination of National Government

Signed  Date 23/7/14

Cabinet Secretary for Foreign Affairs and International Trade

Signed  Date 15/8/14

Cabinet Secretary for the National Treasury

Signed  Date 28/8/14

Attorney General

Signed  Date 30/7/14

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REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE MUTUAL PEACE AND SECURITY PACT.

BACKGROUND

The Pact was drafted in line with the Heads of State of Partner States (Kenya, Rwanda and Uganda) in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 which they incorporated an article on security cooperation in its paragraph 'j' of the Kigali communiqué and Articles 8 and 9 of Memorandum of Understanding on the Tripartite Initiative for fast tracking the East Africa Integration. Article 8 on common defense established the Defense Pact and Article 9 on security established the Mutual Peace and Security Pact.

Pursuant to the directives of the Heads of State at the Kigali Summit of 28th October 2013, Kenya subjected the Pact to the following ratification process.

OBJECTIVES

The purpose of the Pact is to establish a framework for combating crimes towards collective peace and security among Partner States. Partner States according to the Pact are obligated to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the Partner States against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the Partner States;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Enhance the capacity of the Partner States in combating terrorism and piracy;
- v. Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.
- vi. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States

PUBLIC PARTICIPATION

The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 requires Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the Ministry of Interior and Coordination of National Government invited the views of the public by publishing the Pact in two electronic and print media on Thursday 10th July 2014 (People Daily) and Friday 11th July 2014 (Nation Daily).

The Ministry convened a public forum at the Utalii Hotel on 15th July, 2014 to seek their views on the Pact and be incorporated in the report of Inter-Agencies Committee.

STAKEHOLDERS SUBMISSIONS

The stakeholders made the following observations and recommendations on the Mutual Peace and Security Pact signed by the partners on 20th February, 2014:

- 1. PREAMBLE:** The stakeholders observed that the Pact may duplicate or conflict with the EAC Peace and Security Protocol whose ratification process is ongoing. However, it was noted that the Pact stems from the Protocol therefore; it will complement and enhance the implementation of the Protocol to attain the regional peace and security.

2. ARTICLE 1

The stakeholders were in support of the Article with following recommendations:

- **Part (f)** on page 3 of the Pact, stakeholders recommended the definition of TERRORISM to end with the words "... pre-emption to terrorist threats or acts, both real and imputed" as they appear in the EAC Protocol on Peace and Security.
- **Part (i)**, the stakeholders recommended to change the word [ethical] to read [ethnic], racial to race on the definition of the word GENOCIDE.
- **Part (i)(b)** the forum recommended to have the statement read "Causing [serious] bodily or ..." instead of [Seriously] bodily.

- **Part (i)(c)** on page 4 of the Pact, the forum proposed to have the sentence read "... conditions of life calculated to bring about ..." instead of [calculation to bring ...].
- **Part (j)** stakeholders recommended for the inclusion of the words "Radicalisation and Extremism" on the definition for terrorism.

3. ARTICLE 3

- **Part (1)(i)** on page 6 of the Pact, members recommended to include the [...illegal trade in minerals] in combating transnational and cross border crime under the areas of cooperation.
- The stakeholders recommended the inclusion of "Combating Environmental and Wildlife Crime" as a new thematic area of cooperation by Partner States.
- **Part (3)(d)**, the stakeholders observed the wording "Hunt down" criminals was not portraying the best picture for the Partner States. Instead, they recommended the use of the word [Pursue] criminals among member states.

4. ARTICLE 7: The stakeholders were concerned with the extent or level at which information should be shared with other member states. More so, the mechanism put in place in handling sensitive security information.

- The stakeholders observed the need to include a clause which binds Partner States on the principle of confidentiality on received or accessed information in the process of withdrawing from the Pact or when the Pact comes to an end.

CONCLUSION:

There was consensus that the Mutual Peace and Security Pact is of benefit to Kenya in light of the existing and emerging threats to peace and security. The

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ratification of the Mutual Peace and Security Pact will therefore enhance the fulfillment of Kenya's obligation to the AU and UN Peace and Security.

WAY FORWARD:

The stakeholders therefore recommended that Kenya ratifies this Pact in line with the provision of the Constitution 2010 and the Treaty Making and Ratification Act, 2012.

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REPUBLIC OF KENYA

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT**

**CABINET MEMORANDUM ON RATIFICATION OF THE EAST AFRICAN
COMMUNITY PROTOCOL ON PEACE AND SECURITY**

A. OBJECTIVE OF THE MEMORANDUM

The purpose of this Cabinet Memorandum is to apprise the Cabinet on Kenya's participation in regional peace and security under the Treaty for the Establishment of the East African Community (the Treaty), and to seek approval for Kenya to ratify the East African Community Protocol on Peace and Security, hereinafter referred to as the Protocol.

B. THE BACKGROUND OF THE SUBJECT MATTER

The Protocol was drafted in line with Article 151 of the Treaty which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Articles 5(3)(f) and 124 which underscores that peace and security are pre-requisites to social and economic development within the Community. The Partner States subjected the Protocol to the following process before its conclusion:

- i. Several experts working group/ technical experts' meetings constituting the relevant experts from each of the Partner States developed working drafts for consideration by the senior officials of the Sectoral Councils on Defence and security, Cooperation in Defence, Interstate Security and meetings of Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination;

- ii. The relevant senior officials from each of the Partner States considered the various drafts and severally made input into the experts' drafts whenever referred to them;
- iii. Upon consideration and input, the senior officials forwarded their drafts with their input to the Coordination Committee consisting of the Permanent Secretaries/ service commanders/ police chiefs/ defence chiefs for consideration and further input before presentation to the ministerial session of the Sectoral Council on Interstate Security;
- iv. The ministerial session of the Sectoral Council on Interstate Security gave directives and made decisions that required that the certain matters be clarified by the experts while others required further consultations by Partner States. The decisions and directives of the Sectoral Council on Interstate Security were forwarded to the Council;
- v. The Council on a number of occasions directed the Sectoral Council on Interstate Security to convene a meeting of Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination to consider and develop consensus on cross cutting issues covered by the Protocol;
- vi. When consensus was reached by the meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination on consideration of the policy provisions and implications of the Protocol, the Council referred the Draft Protocol to the Sectoral Council on Legal and Judicial Affairs for legal input. This is the Sectoral Council constituted by the Attorneys General of the Partner States;
- vii. The Sectoral Council on Legal and Judicial Affairs did refer the Draft Protocol three times to the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination or the Sectoral Council on Interstate Security for clarification of cross cutting issues or on matters of policy concerns. When it was satisfied that the Protocol was sound, the

Protocol was forwarded to the Council for approval and onwards submission to the Summit for adoption. The EAC Summit of Heads of State approved the East African Community Protocol on Peace and Security at its 14th Ordinary Meeting in Nairobi under the chairmanship of the President of the Republic of Kenya, His Excellency Hon. Mwai Kibaki on 30th November 2012.

- viii. The then Minister for Gender, Children and Social Development, Hon (Dr) Naomi Shabaan, signed the Protocol on behalf of the Republic of Kenya at the 5th Meeting of the Joint Sectoral Councils on Cooperation in Defence, Interstate Security and Foreign Policy Coordination held in Dar es Salaam, in the United Republic of Tanzania on 16th February 2013.
- ix. The EAC Council, sitting in Dar es Salaam on 16th February 2013, directed that all partner States endeavor to ratify the Protocol by 15th February, 2014.

C. ANALYSIS OF THE PROBLEM

a. Objects and subject matter of the Protocol

The main objective of the Protocol is to promote peace, security and stability within the Community and good neighbourliness among Partner States. To this end, the Protocol obligates the Partner States to *inter alia* undertake to:

- i. Protect its people and safeguard the development of the East African Community (EAC) against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
- ii. Coordinate and Cooperate in matters related to peace and security in the EAC;
- iii. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- iv. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on

Arms Control, Disarmament and peaceful relations among Partner States

b. Constitutional implications

- i. The Protocol proposes no amendments to the Constitution of Kenya.
- ii. The Protocol is in line with the principles of the Constitution of Kenya and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighbourliness, interdependence, non aggression and non interference in the internal affairs of each Partner State.

c. Impact of the ratification of the Protocol on national interest

The Protocol encourages Partner States to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to peace and security of Partner States with a view of prevention, better management and resolution of disputes and conflicts between them. To this end, the protocol will commit the government to develop mechanisms that shall aim to:

- i. Coordinate and cooperate with other EAC partner States in matters related to peace and security;
- ii. Prevent, contain and peacefully resolve conflicts and disputes among and within the EAC Partner States;
- iii. Observe and encourage implementation of international conventions touching on peace and security; and
- iv. Enhance the capacity of the Community with respect to; regional peace support operations, disaster management, and management of refugees, combating terrorism and piracy, and exchange of prisoners.

d. Obligations imposed on Kenya by the protocol

Article 151(4) of the Treaty provides that Annexure and Protocols form an integral part of the Treaty which Kenya has already ratified and domesticated vide the Treaty for the Establishment of the East African

Community Act of Kenya, Act No 2 of 2000. The obligations imposed by the Protocol are therefore linked to those of the EAC as established by the Treaty.

e. **Requirements for implementation of the Protocol**

Article 15 of the Protocol provides that the EAC Council of Ministers shall determine the institutional arrangement for the implementation of the Protocol. At the national level, the existing government agencies, mandated to handle the specific thematic areas on the Protocol shall oversee the implementation of the protocol under the supervision of the Department of the East African Affairs.

f. **Policy and legislative considerations**

To realize the objectives of the Protocol, the following have to be considered:

- i. A common regional training standards and curricular for officers cooperating in the relevant sectors;
- ii. Regional centres/institutions of excellence to promote common standards and best practices;
- iii. Harmonization of policies and strategies on peace and security;
- iv. Harmonization and approximation of laws and regulations for effective coordination of cooperation in the sector.

g. **Ministerial responsibility**

The responsibility for the implementation of the Protocol shall be by all Cabinet Secretaries responsible for, internal security, disaster management, refugee affairs, immigration affairs, prisons, probation and after care services, peace building and conflict management, defence affairs, children affairs, registrar of motor vehicles, marine services, and any other area of cooperation that may be agreed by consensus of the Partner States to be included in the EAC regional strategy on peace and security.

h. Implications on matters relating to counties

As per the Constitution, the areas of cooperation covered by the Protocol fall under the functions of the national government. The national government shall therefore coordinate with the county government as and when necessary.

i. Date of signature

The Protocol was signed on 16th February 2013 in Dar es Salaam, in the United Republic of Tanzania

j. The number of states party to the protocol

Five states are currently party to the protocol namely, Republics of Burundi, Kenya, Rwanda, United Republic of Tanzania and Uganda. The Protocol shall apply to any other country granted membership to the EAC under Article 3 of the Treaty.

k. Views of the public on the ratification of the protocol

The Ministry invited the views of the public by publishing the Protocol in the electronic and print media on 22nd November 2013. The Ministry also convened a public forum at the Kenya School of Monetary Studies on 28th January 2014 where it received the views of the public and relevant stakeholders. The same are contained in the enclosed report (*REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE EAST AFRICA COMMUNITY PROTOCOL ON PEACE AND SECURITY DATED 30TH JANUARY 2014*)

l. Provision for reservations and recommendations

The Protocol has no provision for reservations.

m. Reservations/ declarations to align with national interests/ constitution

No Protocol provision applies in this regard.

n. **Use of public funds in the implementation of the protocol**

The implementation of the Protocol will certainly involve the use of public funds by the relevant departments and agencies involved in the implementation. The estimated cost of expenditure may not be apparent at the moment.

D. FINANCIAL IMPLICATIONS

The implementation of the Protocol in the short term is not envisaged to have any major financial implications save for greater emphasis on the regional dimension to the functions and responsibilities during the budgeting process by the relevant Departments and agencies.

In addition, whilst the existing government agencies will carry on with implementation of the Protocol, the obligations arising from the Protocol will call for additional allocation of resources from Partner States. Currently, much of these resources are mainly dependent on development partners.

E. RECOMMENDATIONS TO THE CABINET

The Cabinet is requested to:

- (i) Note the contents of the Cabinet Memorandum
- (ii) Consider and approve the ratification of the Protocol

Cabinet Secretary for East African Affairs, Tourism and Commerce

Signed Phan Die Date 28th August 2014

Cabinet Secretary for Interior and Coordination of National Government

Signed [Signature] Date 14/8/14

Cabinet Secretary for National Treasury

Signed [Signature] Date 25/8/14

Attorney General

Signed [Signature] Date 14/8/14

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ANNEX 1

LIST OF STAKEHOLDERS INVITED TO CONSULTATIVE FORUM ON EAC PEACE AND SECURITY PROTOCOL HELD AT KENYA SCHOOL OF MONETARY STUDIES ON TUESDAY 28TH JANUARY 2014.

1. Principal Secretary for Ministry of Defence
2. Principal Secretary for Ministry of Foreign Affairs and International Trade
3. Principal Secretary for Ministry of Devolution and Planning
4. Principal Secretary for Ministry of EA Affairs, Tourism and Commerce
5. Principal Secretary for Ministry of Interior & CNG-Probation, Prisons, security
6. Principal Secretary for Ministry of labour, social security and services
7. Attorney General
8. Director General
9. Director NCTC
10. Deputy IG Kenya Police
11. Deputy IG Admin Police
12. Kenya National Assembly
13. Chairman CIC
14. Chairman Kenya Law Reform Commission
15. Director KWS
16. Secretary National Steering Committee on Peace Building and Conflict Management
17. Director Kenya National Focal Point on SALW
18. Director Immigration
19. Commissioner Refugee Affairs
20. Director Children Department
21. Managing Director Maritime Authority
22. Country Representative UNHCR
23. Peace and Development Network Trust
24. Act Change Transformation
25. African Peace Forum
26. Safer World
27. Security Research and Information Centre

28. County Commissioner-Muranga,
29. County Commissioner-Nakuru,
30. County Commissioner- Bomet,
31. County Commissioner- Bungoma,
32. County Commissioner- Kisii,
33. County Commissioner- Kirinyaga,
34. County Commissioner-Machakos,
35. County Commissioner- Kitui

REPORT OF THE INTER AGENCY COMMITTEE ON PUBLIC PARTICIPATION PROCESS ON THE RATIFICATION OF THE EAST AFRICA COMMUNITY PROTOCOL ON PEACE AND SECURITY DATED 30TH JANUARY 2014

Background:

The East African Community Protocol on Peace and Security (the Protocol) was drafted in line with Article 151 of the Treaty Establishing the East African Community which empowers Partner States to establish Protocols as are necessary in the areas of cooperation, and Article 124 which underscores that peace and security are pre-requisites to social and economic development within the Community.

Furtherance of the spirit of cooperation in East Africa the EAC Partner States Ministers at the Joint Meeting of the Sectoral Councils on Cooperation in Defence, Inter State Security and Foreign Affairs Coordination in Dar es Salaam, Tanzania on 16th February 2013 signed the Protocol on Peace and Security.

Pursuant to the directive of the EAC Council of Ministers that Partner States ratify the Protocol by 15th February 2014, Kenya commenced the ratification process in line with the Treaty Making and Ratification Act No. 45 of 2012.

Subsequently the Ministry of Interior and Coordination of National Government in liaison with the Ministry of East African Affairs, Commerce and Tourism established an inter-agency committee to oversee the ratification process of the Protocol.

Objectives:

The main objective of the Protocol is to promote peace, security and stability within the Community and good neighbourliness among Partner States. To this end the Partner States shall undertake inter alia to:

1. Protect people and safeguard the development of the Community against instability arising from the breakdown of law and order, intra and inter States conflict and aggression;
2. Coordinate and Cooperate in matters related to peace and security in the community;
3. Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
4. Observe and encourage the implementation of the United Nations, African Union and other International Conventions and Treaties on Arms Control, Disarmament and peaceful relations among Partner States;

Public Participation:

The Constitution of Kenya and Section 7(m) of the Treaty Making and Ratification Act No. 45 of 2012 require Public Participation in the ratification process of any Treaty. In fulfillment of the said requirement, the inter-agency committee invited the views of the public by publishing the Protocol in the electronic and print media on 22nd November 2013. The Committee also convened a public forum at the Kenya School of Monetary Studies on 28th January 2014 where it received the views of the public and relevant stakeholders. The stakeholders were drawn from members of the public, civil societies and government agencies as per annex 1.

STAKEHOLDERS SUBMISSIONS:

Comments on Specific Articles of the Protocol

Article 4 – Conflict Prevention, Management and Resolution (CPMR)

The Committee received the following background information on this article:

That the CPMR component provided by Article 4 has been a work in progress since 2007 at the level of inter-ministerial, technical, and sectoral consultations whose main purpose was to collaborate, to promote regional peace and security through the development, adoption and implementation of the CPMR mechanism. It consists of the establishment of an EAC Peace Facility and adoption of indicators for the EAC Early Warning Mechanism in tandem with UN and AU obligations.

The committee was also informed that the following structures and initiatives have been made and will support implementation of the CPMR component

- Development and operationalisation of the National Peace Policy with key pillars on CPMR, EWARM, Mediation support unit;
- Development of the SALW Policy;
- Institutionalization of peace process to include cross border mechanisms;
- Continuous training and capacity development of stakeholders at regional level through exchange visits.
- Established joint administrative border committees
- Developed Structures to oversee implementation of cross-border community agreements on peace and security
- Mainstreaming gender in peace building and conflict management processes;
- Joint training in Peace Support Operations e.g. at the International Peace support Training Centre (Karen) and Humanitarian Peace School Studies (Embakasi);
- Provided platforms for partnerships, information sharing and synergy among respective agencies i.e. the CEWERUs, the National Focal Point on SALW, Police chiefs and military

Stakeholders' recommendations on Article 4

- Ratification of the protocol will hasten the joint approaches to address insecurity thereby setting the right environment for stability and development in the region.
- Ratification will commit Member States to put in place national mechanisms as well as set aside funds to support implementation;
- Integration on security issues will not only mitigate but foster confidence among the Partner States which will have a significant bearing on Kenya's potential to growth and development;
- Provides opportunity for further negotiation and avenue for fair, transparent and practical enforceable measures.

Article 5 – Prevention of Genocide

The Stakeholders were concerned about the development of joint mechanisms to prevent Genocide and whether it would be more practicable to develop mechanisms to deal with prevention of genocide at individual Partner States level.

The Stakeholders were cognizant of the international principles of non-interference and noted the difficulties of getting involved in the internal affairs of a Partner State and this may pose a challenge in fully implementing the provisions of this Article.

There were concerns raised on the controversy surrounding the definition and existence of Genocide and questions were raised on how to address the issue where the perpetrator was a government of a member State.

It was suggested that maybe the Article should have been substituted with a joint mechanism to promote transitional justice both restorative and retributive.

The forum was however given a background of the intentions of the drafters who were concerned with dealing with the consequences of genocide such as mechanisms to provide humanitarian assistance, granting of asylum to refugees and general prevention measures that can prevent genocide.

There was a suggestion that perhaps Article 5 would have been well captured under Article 4. The forum was informed that this was negotiated text that had become acceptable to all Partner States which is also in accord with International Law such as the definition of genocide as provided by the Rome Statute and therefore it is in order to have Article 5 as a stand-alone provision.

Article 6 – Combating Terrorism

The Stakeholders appreciated Article 6 and observed that cooperation in counter terrorism is a positive move and should be enhanced.

Article 7 – Combating and Suppressing Piracy

The Stakeholders deliberated on whether Piracy happened only in the Indian Ocean or it included piracy in the inland waters such as Lake Victoria. It was clarified that Piracy existed not only in the Indian Ocean but in inland waters as well and hence the need for joint mechanisms to combat and suppress the menace.

The Stakeholders embraced operationalization of this Article noting it will be beneficial to Kenya in terms of safeguarding trade and security. They further noted that joint mechanism would also benefit Kenya because combating piracy is an expensive affair and cooperation with other EAC Partner States would ease the burden and ensure trade benefits within the EAC.

Article 8 – Peace Support Operations

The Stakeholders observed that since there is an East Africa Community Directorate of Peace and Security, it will be easy to implement provisions of this Article.

Article 9 – Disaster Risk Reduction, Management and Crisis Response

The Stakeholders noted that this was an area in which Kenya was greatly challenged in that the country is vulnerable to disasters and yet lacks adequate capacity to mitigate the same. They also noted that although implementation of this Article would be beneficial to Kenya, there was urgent need to:

1. Fast track the development and adaption of a policy framework on disaster management;
2. Establish a full-fledged Disaster Management Authority;
3. Build capacity for prevention of disasters;
4. Enhance coordination of all departments and stakeholders that deal with disaster prevention and management;
5. Conduct civic education on disaster risk reduction;

Stakeholders' Recommendations on Article 9:

The stakeholders concluded that there was need to establish a Disaster Management Authority before effectively developing mechanisms to provide mutual assistance and crisis response at the regional level. However they noted that development of joint mechanisms to deal with disasters is positive and should be encouraged.

Article 10 – Management of Refugees

The Stakeholders appreciated this Article and stated that it would encourage Partner States to consider developing a common policy to regulate refugee camps and other refugee affairs. They also made the following observation and recommendations:

1. That local communities support government's policy on closure of refugee camps;
2. The need to harmonize identification and documentation of refugees entering the region;
3. The need to fast track enactment of the Refugee Amendment Bill;
4. The need to develop a policy for the management of refugees.

Article 11 – Control of Proliferation of Illicit Small Arms and Light Weapons (SALW)

The Stakeholders acknowledged that progress on this Article had been made in terms of:

1. Establishment of a National Focal Point (NFP) on SALW;
2. Formulation of SALW Policy;
3. All Partner states are members of the Nairobi Protocol on SALW;
4. All Partner States have shown commitment to regional and international instruments on SALW

The Stakeholders however noted that successful implementation of this Article will depend on effective operationalization of the following:

1. The Nairobi Protocol on SALW
2. National Action Plans on SALW
3. Strengthening the capacities of NFPs and Regional Centre on Small Arms in the Great Lakes Region, Horn of Africa and bordering States;

Ratification of the Peace and security protocol will therefore be a boost in areas of SALW proliferation and cattle rustlings.

Article 12 – Combating Transnational and Cross Border Crimes

The Stakeholders welcomed the inclusion of this Article but observed the following:

1. The Republics of Kenya, Uganda and Rwanda have entered a pact on a Single EAC Tourist Visa;
2. Any joint operations on cross border security management should be guided by the Constitution of Kenya and International Human Rights Instruments

The Stakeholders observed that there had been challenges since some of the EAC Partner States do not issue National identity Cards and this poses security challenges when their nationals seek entry into Kenya using non travel identification documents.

Stakeholders' Recommendations on Article 12:

The Stakeholders noted that there are challenges posed by lack of harmonized documents that are acceptable to allow cross border movement and in the absence of new generation identify cards by all Partner States, there is need to fast track and internationalize a common travel document for use within the Community.

Article 13 – Preventing and Combating Cattle Rustling

The Stakeholders noted the Protocol on the Prevention, Combating and Eradication of Cattle Rustling in Eastern Africa (Mifugo Protocol) will compliment the implementation of this Article.

Stakeholders' Recommendation on Article 13:

There is need to:

1. Create structures and programs for joint operations and initiatives.
2. Develop a policy on Prevention and Combating of Cattle Rustling
3. Develop a Strategic Plan especially in branding, marking, surveillance and tracking of animals.

This protocol takes cognizance of others such as Mifugo Protocol and Nairobi Protocol. Improved coordination and linkage of security agencies on areas of converging is therefore of great interest for the country.

Article 14 – Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders

The Stakeholders noted the following:

1. There is need to incorporate correctional services and to fast track the enactment of the Transfer of Prisoners Bill towards realization of the objectives of Article 14.
2. There is need for Partner States to develop a platform for sharing information on prohibited persons and those declared persona non grata;
3. There is need to develop a common travel document within the Community.

The Stakeholders proposed that the government be advised to insist on the required use of the East Africa Passport as the official travel document within the EAC.

The Stakeholders submitted the following general comments.

1. That the Protocol had already been signed by the Partner States;
2. Once ratified, implementation of the Protocol will be made easier through the use of existing mechanisms/institutions for example the EAC Directorate of Peace and Security;
3. Stakeholders views will inform the Cabinet on the way forward and especially address the following concerns on implementation of the Protocol:
 - (a) Financial Implications;
 - (b) Kenya's level of preparedness;
 - (c) Availability of structures in Kenya that will assist in implementation;
 - (d) Harmonization of policies, laws, strategies and measures for realization of Protocol objectives;
 - (e) Development of strategic plans and action plans
 - (f) Strengthening focal points.
4. There was consensus that the Protocol is relevant but there is need to strengthen Kenya's institutions and enhance national capacity;
5. There is need to bring together all agents that have been acting singularly and whose competencies touch on security.
6. There is need to act in synergy to address border security which would require harmonization of policies, strategies and laws that deal with the same which will be realized with the ratification of the Protocol.
7. **Financial implications:** While the existing government agencies will carry on with Implementation, the obligations arising herein will call for additional allocation of resources from Partner States.

Conclusion:

There was consensus that the Protocol is of benefit to Kenya in light of the existing and emerging threats to peace and security. The Committee was requested to appraise the government on the areas for improvement that had been highlighted by the Stakeholders. It was also requested to appraise the government to strengthen officers' capacity to mitigate and deal with the challenges that will arise from implementation of the Protocol.

The ratification of the EAC Peace and Security Protocol will therefore enhance the fulfillment of Kenya's obligation to the AU and UN peace and security requirements.

Way Forward:

Kenya should ratify the Protocol after fulfilling the requirements of the Constitution and the Treaty Making and Ratification Act of 2012.



LAWS OF KENYA

TREATY MAKING AND RATIFICATION ACT

No. 45 of 2012

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NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

ARRANGEMENT OF SECTIONS

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2. Interpretation.
3. Application.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation.
5. Initiation of treaty making process.
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PART IV – REGISTRY OF TREATIES

13. Registry of Treaties.
14. Registrar.

PART V – GENERAL PROVISIONS

15. Public awareness.
16. Reporting in compliance with terms of treaties.
17. Denunciation of certain treaties.
18. Rules.

NO. 45 OF 2012

TREATY MAKING AND RATIFICATION ACT

[Date of assent: 13th December, 2012.]

[Date of commencement: 14th December, 2012.]

An Act of Parliament to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Treaty Making and Ratification Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**bilateral treaty**” means an agreement concluded between Kenya and any other State or between Kenya and an international organisation;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to treaties;

“**full powers**” means all those powers conferred, by way of a legal document, to a person or persons designated by a competent state authority, to represent the State for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect of a treaty;

“**international organisation**” means an intergovernmental organization;

“**ratification**” means the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides;

“**Registrar**” means the Registrar of Treaties appointed under section 14;

“**Registry**” means the Registry of Treaties established by section 10;

“**relevant Cabinet Secretary**” means the Cabinet Secretary for the time being responsible the subject matter of the treaty;

“**relevant State department**” means the State department responsible for the subject matter of the treaty to be approved for ratification;

“**reservation**” means a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State;

“signature” means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

“treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “**Cabinet Secretary**” and “**State Department**” shall be construed to mean “**Minister**” and “**Ministry**” respectively.

3. Application

(1) This Act applies to treaties which are concluded by Kenya after the commencement of this Act.

(2) This Act shall apply to—

- (a) multilateral treaties;
- (b) bilateral treaties which deal with—
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;
 - (ii) the rights and duties of citizens of Kenya;
 - (iii) the status of Kenya under international law and the maintenance or support of such status;
 - (iv) the relationship between Kenya and any international organisation or similar body; and
 - (v) the environment and natural resources.

(3) A treaty relating to the adjustment, alteration or variation of the present position of Kenya on matters of sovereignty, independence and territorial integrity shall be approved in a referendum in accordance with Article 255 of the Constitution.

(4) Notwithstanding subsection (2)(b), the Government may enter into bilateral agreements—

- (a) necessary for matters relating to government business; or
- (b) relating to technical, administrative or executive matters.

PART II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation

(1) Subject to the provisions of this Act, the national executive shall be responsible for initiating the treaty making process, negotiating and ratifying treaties.

(2) The responsibility provided for in subsection (1) may be delegated to a relevant State department.

5. Initiation of treaty making process

(1) Subject to the provisions of this section, the relevant national executive or the relevant State department shall initiate the treaty making process in such manner as may be prescribed by the Cabinet Secretary.

(2) When deciding whether to initiate the treaty-making process or not, the national executive or the relevant State department shall consider the following—

- (a) the need that the new treaty is to meet;
- (b) the existing legal regime, including the extent of its applicability to the perceived problem;
- (c) the probability of reaching the required measure of agreement on the solution aimed for;
- (d) any relevant legislative efforts related to the perceived problem;
- (e) the optimal form for the proposed treaty;
- (f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
- (g) the anticipated time schedule for completing the treaty-making process;
- (h) the expected costs of formulating and adopting the treaty to Kenya;
- (i) in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

(3) The national executive or the relevant State department shall record whether the conditions in subsection (2) are met, and shall present a proposal to commence treaty-making for approval by the Cabinet.

(4) The Cabinet shall consider and approve or disapprove a proposal for treaty making presented in accordance with subsection (3) within a reasonable time.

6. Values and principles in negotiating treaties

(1) In negotiating treaties, the national executive or the relevant State department shall be bound by the values and principles of the Constitution; and shall take into account the regulatory impact of any proposed treaty.

(2) When appointing persons to negotiate a treaty, the national executive or the relevant State department shall appoint persons who are competent to undertake such negotiations in the interest of the people of Kenya.

PART III – RATIFICATION OF TREATIES**7. Approval by Cabinet**

Where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;

- (b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;
- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

8. Consideration by Parliament

(1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

(2) A treaty approved for ratification by the Cabinet under section 7 shall, depending on its subject matter, be considered by both or the relevant House of Parliament paying due regard to Part 1 and Part 2 of Chapter Eight of the Constitution.

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) Where one House approves the ratification of a treaty and the other House refuses to approve the ratification of a treaty, the treaty shall be referred to the mediation committee in accordance with Article 112 of the Constitution.

(7) Where the both Houses refuse to approve the ratification of a treaty, the Speakers of the two Houses shall submit their decision to the relevant Cabinet Secretary within fourteen days of the decision.

(8) Nothing in this Act precludes the resubmission of a treaty to National Assembly and where applicable the Senate, where approval for the ratification of the treaty had been refused.

(9) Parliament shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

9. Approval for ratification

(1) Where the ratification of a treaty referred to in section 7 is approved by Parliament without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

(2) Where a treaty referred to in section 7 is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.

(3) Where Parliament refuses to approve the ratification of the treaty referred to in section 7, the Government shall not ratify the treaty.

10. Ratification of Treaty

(1) All instruments of ratification of a treaty shall be signed, sealed and deposited by the Cabinet Secretary at the requisite international body and a copy thereof shall be filed with the Registrar.

(2) Where a treaty ratified under this Act is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in this Part.

(3) The provisions of subsection (2) shall apply similarly to protocols signed under a treaty.

11. Granting of full powers

The Cabinet Secretary may grant full powers to such persons as may be appropriate for the purposes of ratification of any treaty in accordance with this Act.

12. Offence to ratify without approval

(1) A person shall not ratify any treaty on behalf of the Government of Kenya unless the treaty has been considered and approved by the Cabinet and Parliament in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable to imprisonment for a term not exceeding fifteen years or to a fine not exceeding twenty million shillings or to both such fine or imprisonment.

PART IV – REGISTRY OF TREATIES

13. Registry of Treaties

(1) There shall be a Registry of Treaties which shall be a department within the State Department responsible for matters relating to treaties.

(2) The Registry shall—

- (a) be the depository of all treaties to which Kenya is a party;
- (b) contain a record of all treaties in such manner as may be prescribed;
- (c) contain the status of all treaties pending ratification or domestication and the timelines for such ratification or domestication;
- (d) perform such other function as may be assigned to it by the Cabinet Secretary.

14. Registrar

(1) The Registry shall be headed by the Registrar of Treaties who shall be appointed by the Cabinet Secretary through an open and competitive process, with the approval of the Public Service Commission.

(2) The office of the Registrar shall be an office in the public service.

(3) A person shall be qualified to be appointed as Registrar if such person has—

- (a) at least a degree in law from a university recognised in Kenya; and
- (b) at least seven years experience in the practice of law or international relations;

(4) The Registrar shall—

- (a) maintain a record of—
 - (i) the treaties to which Kenya is a signatory;
 - (ii) the treaties proposed for ratification by Kenya;
 - (iii) the treaties that Kenya has ratified;
 - (iv) Kenya's reports to any treaty body;
 - (v) the recommendations and concluding observations from any treaty body on Kenya's reports;
- (b) monitor the implementation of the treaties ratified by Kenya;
- (c) inform lead State departments to observe and uphold the obligations of the respective lead state department under the respective treaties;
- (d) advise any citizen of Kenya on the rights and obligations of Kenya under a treaty;
- (e) maintain a website of the treaties to which Kenya is a signatory;
- (f) keep copies of the published reports of proceedings of the negotiations that led to the adoption of the treaties ratified by Kenya;
- (g) facilitate public access to treaties which Kenya has ratified;

- (h) respond to public inquiries on any treaty ratified by Kenya; and
- (i) perform such other functions as may be prescribed by the Cabinet Secretary.

PART V – GENERAL PROVISIONS

15. Public awareness

(1) The Cabinet Secretary shall cause to be laid before the National Assembly, at least once every financial year, a report containing records of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.

(2) The Cabinet Secretary shall, through publication in at least two newspapers of nationwide circulation, notify the public of every treaty, which may in any way bind, or to which Kenya is a party.

(3) The relevant State Department in respect of each treaty shall take measures to inform and create awareness to the public about the effects and benefits of the treaty.

16. Reporting in compliance with terms of treaties

Where a treaty provides for the submission of periodic reports as part of its monitoring mechanisms the Cabinet Secretary shall, in conjunction with the Attorney-General and the relevant State Department facilitate the preparation and submission of such report within the prescribed period.

17. Denunciation of certain treaties

(1) Where Kenya wishes withdraw from a treaty, the relevant Cabinet Secretary shall prepare a cabinet memorandum indicating the reasons for such an intention.

(2) The provisions of sections 4, 5 and 6 shall apply with necessary modifications, to withdrawal from a treaty.

18. Rules

(1) The Cabinet Secretary may make Rules for giving effect to this Act.

(2) Without limiting the generality of subsection (1) the Cabinet Secretary may make Rules—

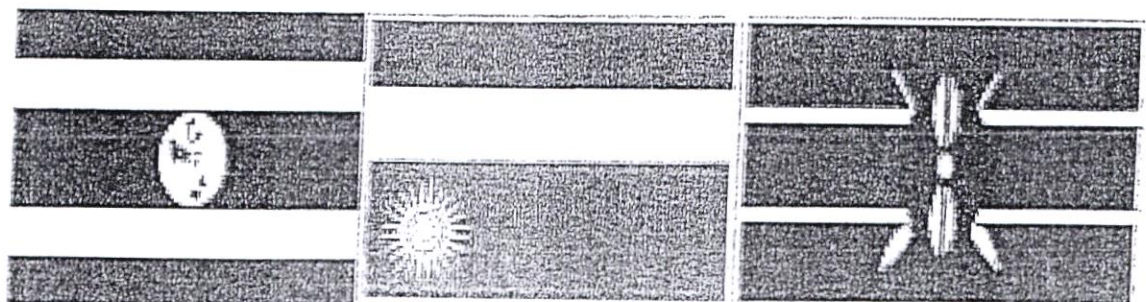
- (a) prescribing anything that needs to be prescribed under this Act;
 - (b) for the granting of full powers in other areas in addition to the one specified under section 8;
 - (c) providing for the administrative steps to be taken prior to the preparation of the cabinet memorandum for cabinet approval of a treaty under this Act;
 - (d) the dissemination of information under this Act.
-

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MUTUAL PEACE AND SECURITY PACT



PREAMBLE

PURSUANT TO the decisions of the Heads of State and Government in the Tripartite Summits held in Entebbe, Uganda, on 25th June 2013, Mombasa, Kenya, on 28th August 2013, and Kigali, Rwanda on 28th October 2013 in its paragraph [j] of the Kigali Communiqué on security cooperation. In compliance with article 8 of the MoU on fast tracking East African Integration signed on 28th October 2013 providing for a defense pact by end January 2014.

RECOGNIZING that various efforts have been made under the EAC in the peace and security sector;

NOTING that the ratification process of the EAC Protocol on Peace and Security is ongoing

AND WHEREAS the Partner states further agreed to encourage and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to the peace and security of the Partner states with emphasis to the in prevention, better management and resolution of disputes and conflicts in the region;

AND WHEREAS the Partner States agreed to enhance co-operation for mutual peace and security;

IN COMPLIANCE with the provisions of the MoU between Republic of Kenya, the Republic of Rwanda and the Republic of Uganda on the Tripartite Initiative for fast-tracking the East African Integration;

AND IN COMPLIANCE with the Integration Projects Summit Joint Communiqué held in Kigali, Rwanda on 28th October 2013;

DO RESOLVE to unite their efforts towards collective peace and security, and the preservation of peace, security and stability;

Now, therefore, the Partner States hereby agree to conclude this Mutual Peace and Security Pact (hereinafter referred to as "the Pact") as follows:

ARTICLE 1:

Interpretation

1. In this Pact, except where the context otherwise requires, the following terminologies shall mean:

- a. **Mutual and Collective security:** The collective measures taken by the Partner States to ensure peace and security.
- b. **Partner States:** The Partner States signatory to this Pact
- d. **Summit:** The committee composed of the Heads of State and Government of the Member States;
- e. **Cross border crime:** A crime committed across Partner states which share common border;
- f. **Counter Terrorism:** Practices, tactics, approaches, techniques and strategies established by Partner states in response or pre-emption to terrorist threats or acts;
- g. **Transnational Crimes:** Crimes committed across the border of Partner states which do not share a common border.
- h. **Disaster Management:** Strategies for managing disaster which help to ensure that loss of life, property and environmental degradation is at a minimum and includes strategies for the prevention, preparedness, response and recovery, situation and risk analysis, and the planning and the implementation of plans or programs, and for monitoring and evaluation.
- i. **Genocide:** Any of the following acts committed with the intent to destroy, in whole or in part, a national ethnic, racial or religious group as such:
 - a) Killing member of the group;
 - b) Causing seriously bodily or mental harm to the members of the group;

- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

j. Terrorism:

a) Any act which is the a violation of the criminal Laws of a partner State and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and calculated or intended to:

i. Intimidate, put in fear, put in force, coerce or induce any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular stand point, or to act according to certain principles.

ii. Disrupt any service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a partner State.

b) Any promotion, sponsoring, contributing to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) and (ii).

ARTICLE 2

Objectives

1. The purpose of this Pact is to establish a framework for combating crimes to contribute towards collective peace and security among Partner States.
2. Without prejudice to paragraph 1, the Partner States undertake to;



- a) Protect the people in and safeguard the development of the Partner States against the instability arising from the breakdown of the Law and order, intra and inter-State conflicts and aggression;
- b) Coordinate and cooperate in matter related to peace and security in the Partner States;
- c) Prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- d) Observe and encourage the implementation of the United Nations, African Union and other International conventions and treaties on the arms control, disarmament and the, peaceful relations between Partner States;
- e) Develop peace keeping capacity and coordinate participation of the Partner States in International and Regional peace support operations;
- f) Enhance the capacity of the Partner States with respect to disaster management and coordination of the International Humanitarian assistance;
- g) Enhance the capacity of the Partner States in the management of refugees;
- h) Enhance the capacity of the Partner States in combating terrorism and piracy and;
- i) Cooperate in exchange of prisoners, detention, custody and rehabilitation of the offenders.

ARTICLE 3

Areas of cooperation

1. In order to achieve the Pact objective as in Art 2, the security inter-agencies of Partner States shall cooperate in all areas relevant for the promotion, maintenance of peace and security, stability in the region and shall include:

- a. Conflict prevention, management and resolution
- b. Prevention of genocide
- c. Combating terrorism
- d. Combating and suppressing piracy
- e. Peace support operations
- f. Disaster risk reduction, management and crisis response

- g. Management of refugees
- h. Control of proliferation of illicit small arms and light weapons
- i. Combating transnational and cross border crimes, including drug and human trafficking, illegal migration, money laundering, cyber crime and motor vehicle theft
- j. Addressing and combating cattle rustling
- k. Prisons and correctional services including exchange of prisoners, detention, custody and rehabilitation of offenders
- l. Combating organized crimes;
- m. Combating economic crimes;
- n. Collect, collate and share intelligence on emerging and existing threats

2. Sharing and promoting best practices including, mobilization of the population to prevent, combat and eradicate crimes, disaster preparedness and management.

3. For purposes of combating cross border crimes the Partner states shall develop appropriate mechanisms, strategies and programs as follows: :

- a. Establishment of fusion centers
- b. Establishment of database on cross border crimes;
- c. Enhancing technical capacity for criminal intelligence;
- d. Facilitating joint operations to hunt down criminals among member states;
- e. Management of fugitives and suspects;
- f. Capacity building ,Training and Knowledge sharing;
- g. Harmonizing national legislations.
- h. Fast Tracking identified centers of excellence in Policing.

ARTICLE 4

Exchange of information and experience

1. The Partner states, through the established relevant organs, shall regularly exchange information, conduct and coordinate operations in the field of combating crimes.

2. Partner states, through established relevant organs and structures, shall work together to develop and enhance their capacities in a closer cooperation to facilitate the effective implementation of this pact and the achievement of its objective. In order to achieve the objectives of the Pact, the Partner States agree to undertake concerted measures to enhance cooperation in training and development mostly but not limited to:

- a. IT skills,
- b. Criminal investigations techniques
- c. Intellectual Property crimes
- d. Financial crimes
- e. Drug trafficking
- f. Smuggling of goods
- g. Human trafficking
- h. Counter terrorism
- i. Forensic Skills
- j. Any other areas of shared priority and common interest as may be agreed to by the Partner States.

ARTICLE 5

Free Movement of People

The free movement of people using ID, Voter's Cards and Student IDs poses security challenges. Each Partner State shall:

- a. Establish a mechanism for issuing student identification documents.
- b. Harmonize visa regulations to guide the issuance of single tourist visa.

ARTICLE 6

Funding

Partner States shall adequately finance the activities of the relevant organs, structures and operations.



ARTICLE 7

Confidentiality of Information

1. The Partner States undertake not to disclose any classified information obtained in the implementation of this Pact, or any other related agreements, other than to their own staff, to whom such disclosure is essential for purposes of having effect to this Pact or such further agreements pursuant to this Pact.
2. The Partner States further undertake not to use any classified information obtained during any multilateral cooperation among them to the detriment of or against the interests of any Partner State.
3. Visiting personnel, in the implementation of this Pact, shall comply with the Security Regulations of the host Partner State. Any information disclosed or made available to such visiting personnel shall be treated in accordance with the provisions of this Article.

ARTICLE 8

Accession

This Pact shall remain open for accession by any State as shall be approved by the Partner States through the policy organs from time to time.

ARTICLE 9

Settlement of Disputes

Any dispute among the Partner States arising from the interpretation and/or implementation of this Pact shall be settled amicably. Where there is no resolution, the matter shall be referred to the EAC Court of Justice or any other mechanism agreed upon by the Partner States.

ARTICLE 10

Withdrawal of a Member

Any Partner State may withdraw from this Pact upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Summit and shall cease to enjoy all rights and benefits under this Pact.

ARTICLE 11

Amendment

1. Any Partner State may propose an amendment to this Pact.
2. Such proposals are to be made to the relevant organs which shall duly notify the Summit for consideration.
3. An amendment to this Pact shall be adopted by consensus of all the Partner States.

ARTICLE 12

Review of the Pact

This Pact shall be reviewed every three years.

ARTICLE 13

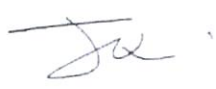
Breach of the Pact

Any Partner State may report an alleged breach of the Pact to the Summit, which shall instruct the relevant organs to carry out an investigation, report thereon and make recommendations back to the Summit.

ARTICLE 14

Implementation

The relevant authorities including other National Security Services such as Correctional, Immigration and Intelligence Services are to develop such organs, structures and policies as shall be necessary for the implementation of this Pact by 30th March 2014 for subsequent approval by the Committee of Ministers for onward transmission to the Summit.



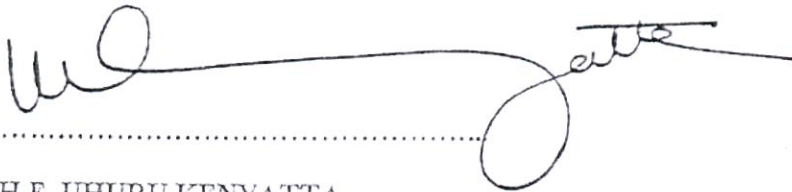
ARTICLE 15

Entry into Force

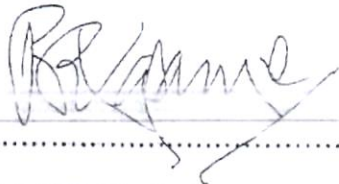
This Pact shall enter into force upon ratification by Partner States. The Pact shall enter into force 6 months after the date of signature by Partner States.

DONE at Kampala, Uganda this 20th day of February, 2014

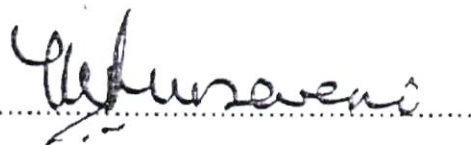
IN WITNESS WHEREOF, WE, THE HEADS OF STATE OF PARTNER STATES HAVE SIGNED THIS PACT.



.....
H.E. UHURU KENYATTA
PRESIDENT OF THE REPUBLIC OF KENYA



.....
H.E. PAUL KAGAME
PRESIDENT OF THE REPUBLIC OF RWANDA



.....
H.E. YOWERI KAGUTA MUSEVENI
PRESIDENT OF THE REPUBLIC OF UGANDA



East African Community

Protocol on Peace and Security





East African Community

Protocol on Peace and Security

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Preamble

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WHEREAS the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda signed the Treaty Establishing the East African Community on the 30th day of November 1999;

AND WHEREAS the Republic of Burundi and the Republic of Rwanda acceded to the accession Treaty on the 1st day of July 2007;

AND WHEREAS in order to promote the achievement of the objectives of the Community set out in the Treaty the Partner States agreed under Article 5(3)(f) to promote peace, security, and stability within, and good neighborliness among themselves;

AND WHEREAS under Article 124 of the Treaty the Partner States agreed that peace and security are pre-requisites to social and economic development within the Community and vital to the achievement of the objectives of the Community;

AND WHEREAS the Partner States further agreed to foster and maintain an atmosphere that is conducive to peace and security through cooperation and consultations on issues pertaining to the peace and security of the Partner States with a view to the prevention, better management and resolution of disputes and conflicts between them;

AND WHEREAS under Article 151 of the Treaty, the Partner States undertook to conclude such protocols as may be necessary in each area of cooperation which shall spell out the objectives, scope of, and the institutional mechanisms for cooperation and integration ;

NOW THEREFORE the Partner States;

RE-AFFIRMING their faith in the purposes and principles of the Charter of the United Nations, and the Constitutive Act of the African Union and the desire to live in peace with all peoples and governments;

RECOGNIZING the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in the internal affairs of each Partner State;

AWARE that peace, security and strong political relations are critical factors in creating a conducive environment for regional co-operation and integration;

CONSCIOUS of the fact that close co-operation, mutual understanding and collaboration in matters of peace and security will be to the mutual benefit of the Partner States;

DETERMINED to establish a regional mechanism for the effective implementation of decisions made in areas of peace and security, and to consolidate further ties of friendship and fraternity amongst the Partner States;

AGREE as follows:

ARTICLE 1 - Interpretation

In this Protocol, except where the context otherwise requires-

“combined operations” means any operation carried out by the forces of the Partner States under one command;

“Community” means the East African Community established by Article 2 of the Treaty;

“Council” means the Council of Ministers of the Community provided for under Article 9 of the Treaty;

“counter-terrorism” means practices, tactics, techniques, and strategies that Governments, militaries, police departments and corporations of Partner States adopt in response to terrorist threats or acts, both real and imputed;

“cross border crime” means a crime committed across Partner States which share a common border;

“disaster management” means strategies for managing disasters which help to ensure that loss of life, property and environmental degradation is at a minimum and includes strategies for the prevention, preparedness, response and recovery, situation and risk analysis, and the planning and the implementation of plans or programs, and for monitoring and evaluation;

“early warning” means the process of collecting, verifying and analysing information for the purpose of identifying threats to peace and security and communicating the information to the responsible authorities;

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“**genocide**” means any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group;

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“**joint operations**” means operations, which involve multi-Sectoral agencies of the Partner States engaged in peace support operations, disaster management, search and rescue, counter-terrorism, transnational and cross border crimes and any other operations which may be mutually determined by the Partner States;

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“**terrorism**” means:

- (a) any act which is a violation of the criminal laws of a Partner State and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any member or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment of any of these, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency or create general insurrection in a Partner State;
- (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) and (ii);

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“**transnational crime**” means a crime committed across the border of Partner States which do not share a common border.

ARTICLE 2 - Scope of Cooperation

1. The Partner States shall cooperate in peace and security matters and collaborate with international and regional organisations to promote peace and security in the region.
2. The Partner States shall where necessary develop common measures, strategies and programmes and enter into agreements for the effective implementation of this Protocol.
3. Without prejudice to the generality of this Article, the Partner States agree to, *inter alia* cooperate in the following areas:
 - (a) conflict prevention, management and resolution;
 - (b) prevention of genocide;
 - (c) combating terrorism;
 - (d) combating and surpressing piracy;
 - (e) peace support operations;
 - (f) disaster risk reduction, management and crisis response;
 - (g) management of refugees;
 - (h) control of proliferation of illicit small arms and light weapons;
 - (i) combating transnational and cross border crimes; including drug and human trafficking, illegal migration, money laundering, cyber crime and motor vehicle theft;
 - (j) addressing and combating cattle rustling; and
 - (k) Prisons and Correctional Services including exchange of prisoners, detention, custody and rehabilitation of offenders.
4. For purposes of paragraph 3, the Partner States agree to establish an early warning mechanism to facilitate the anticipation, preparedness and early responses to prevent, contain and manage conflict and crisis situations in the areas of cooperation.

ARTICLE 3 - Objectitives

1. The objective of this Protocol is to promote peace, security, and stability within the Community and good neighbourliness among the Partner States.
2. Without prejudice to paragraph 1, the Partner States undertake to:
 - (a) protect the people and safeguard the development of the Community against instability arising from the breakdown of law and order, intra-and inter-state conflicts and aggression;
 - (b) co-ordinate and co-operate in matters related to peace and security in the Community;

- (c) prevent, contain and peacefully resolve conflicts and disputes among and within the Partner States;
- (d) observe and encourage the implementation of the United Nations, African Union and other international conventions and treaties on arms control, disarmament and peaceful relations between Partner States;
- (e) develop peacekeeping capacity and co-ordinate the participation of Partner States in international and regional peace support operations;
- (f) enhance the capacity of the Community with respect to disaster management and co-ordination of international humanitarian assistance;
- (g) enhance the capacity of the Partner States in the management of refugees;
- (h) enhance the capacity of the Partner States in combating terrorism and piracy;
- (i) cooperate in exchange of prisoners, detention, custody and rehabilitation of offenders; and
- (j) implement the East African Community Strategy on Regional Peace and Security.

ARTICLE 4 - Conflict Prevention, Management and Resolution

1. The Partner States undertake to develop an East African Community conflict prevention, management and resolution mechanism.
2. For purposes of paragraph 1, Partner States shall manage and seek to resolve any dispute or conflict within and between two or more Partner States or with foreign countries by peaceful means.
3. The Community may, in consultation with the United Nations Security Council and the Peace and Security Council of the African Union, offer to mediate in disputes or conflicts within and between two or more Partner States or with foreign countries.

ARTICLE 5 - Prevention of Genocide

1. The Partner States undertake to cooperate in the prevention of genocide within the Community.
2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) prevent any act intended to destroy, in whole or in part, a national, ethnic, racial or religious group; and
 - (b) develop a joint mechanism for the prevention of genocide and take appropriate measures against the perpetrators.

ARTICLE 6 - Combating Terrorism

1. The Partner States agree to cooperate in counter terrorism measures within the Community.
2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) jointly formulate strategies and mechanisms for the operationalisation of counter-terrorism measures;
 - (b) jointly formulate strategies and mechanisms to combat terrorism;
 - (c) jointly formulate strategies on how to conduct joint operations; and
 - (d) conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

ARTICLE 7 - Combating and Suppressing Piracy

1. The Partner States agree to cooperate in combating piracy in the Community.
2. For the purposes of paragraph 1, the Partner States undertake to:
 - (a) jointly formulate mechanisms for the operationalisation of anti piracy measures; and
 - (b) jointly formulate mechanisms to fight piracy;
 - (c) jointly develop strategies on how to fight and suppress piracy; and
 - (d) conduct combined operations or joint operations within the context of the Community, the African Union and the United Nations.

ARTICLE 8 - Peace Support Operations

1. The Partner States shall formulate a joint mechanism for the operationalisation of peace support operations within the context of the Charter of the United Nations, the Constitutive Act of the African Union and the Treaty.
2. The Partner States shall conduct peace support operations within the Community under a conflict prevention, management and resolution framework.

ARTICLE 9 - Disaster Risk Reduction, Management and Crisis Response

1. The Partner States shall develop mechanisms to provide mutual assistance in disaster management and crisis response
2. For the purposes of paragraph 1, the Partner States shall:
 - (a) develop and early warning and response system for common disasters within the Community;
 - (b) establish the database for disaster management; and
 - (c) develop capacity to manage disaster situations.

ARTICLE 10 - Management of Refugees

1. The Partner States undertake to establish common mechanisms for the management of refugees.
2. For the purposes of paragraph 1, the Partner States shall:
 - (a) harmonize their policies, laws, strategies and programmes on the management of refugees;
 - (b) incorporate the provisions of the 1951 UN Convention on Refugees and 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa in their national legislation;
 - (c) establish and harmonise asylum procedures;
 - (d) network and share information regarding asylum seekers and refugees;
 - (e) institute mechanisms to facilitate family re-union;
 - (f) establish systems for agencies involved with refugees within the Community to share views and exchange experiences; and
 - (g) develop joint training modules for stakeholders in refugee management.

ARTICLE 11 - Control of Proliferation of Illicit Small Arms and Light Weapons

The Partner States undertake to jointly develop policies, measures, mechanisms, strategies and programmes, to control the proliferation of illicit small arms and light weapons.

ARTICLE 12 - Combating Transnational and Cross Border Crimes

1. The Partner States shall undertake joint operations in controlling and preventing transnational and cross-border crimes including:
 - (a) the theft of motor vehicles;
 - (b) the smuggling of goods;
 - (c) illicit drug trafficking;
 - (d) human trafficking;
 - (e) illegal migration;
 - (f) trade in counterfeit goods;
 - (g) intellectual property piracy; and
 - (h) any other transnational and cross – border crimes.

2. For purposes of paragraph 1, the Partner States shall develop appropriate mechanisms, policies, measures, strategies and programmes to combat cross-border crimes including:
 - (a) the establishment of regional databases on cross-border crimes;
 - (b) the enhancement of technical capacity for criminal intelligence;
 - (c) the enhancement of the exchange of criminal intelligence and other security information between the Partner States central criminal intelligence information centres;
 - (d) the strengthening of cross border security;
 - (e) the training of personnel and sharing information on the *modus operandi* being used by criminals;
 - (f) the enactment of laws on mutual legal assistance in criminal matters; and
 - (g) the establishment of cross border and inter state communication.

ARTICLE 13 - Preventing and Combating Cattle Rustling

1. The Partner States that do not have policies and laws to prevent and combat cattle rustling agree to develop and adopt policies, law and strategies to achieve this.
2. The Partner States agree to harmonise their policies, laws and strategies to prevent and combat cattle rustling.

ARTICLE 14 - Cooperation in the Exchange, Detention, Custody and Rehabilitation of Prisoners and Offenders

1. The Partner States agree to cooperation in the exchange, custody and rehabilitation of prisoners and offenders.
2. For purposes of Paragraph 1, the Partner States agree to, *inter alia* cooperate in the following areas:
 - (a) the governance and management frameworks of prisons and correctional services;
 - (b) penal reform agenda; and
 - (c) research, data collection, information exchange and the enhancement of regional standards, policies and practices.
3. The Partner States agree to harmonise their training programmes and practices in relation to the management of penal and rehabilitation institutions.

ARTICLE 15 - Institutional Arrangements

The Council shall determine the institutional arrangements for the implementation of this Protocol.

ARTICLE 16 - Relationship with Regional and International Organisations

The Partner States shall foster cooperation with regional and international organizations whose activities have a bearing on the objectives of this Protocol.

ARTICLE 17 - Confidentiality of Information

1. The Partner States undertake not to disclose any classified information, obtained under this Protocol or as a result of their participation in the Community, other than to their own officials to whom such disclosure is essential for purposes of giving effect to this Protocol or any directive taken by the Summit.
2. Partner States shall ensure that the officials referred to in this Article shall at all times maintain strict secrecy.
3. Partner States further undertake not to use any classified information obtained during any multilateral co-operation between and or among them to the detriment of any Partner State.
4. A Partner State shall remain bound by the requirement of confidentiality under this Article even after withdrawal and expulsion from the Community.

ARTICLE 18 - Dispute Settlement

Any dispute between the Partner States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the Treaty.

ARTICLE 19 - Amendment of the Protocol

This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.

ARTICLE 20 - Entry into Force

This Protocol shall come into force upon ratification and deposit of the instruments of ratification with the Secretary General by all Partner States.

ARTICLE 21 - Depository and Registration

1. The original text of this protocol shall be deposited with the Secretary General who shall transmit certified true copies thereof to all Partner States.
2. The Secretary General shall register this protocol with the African Union, United Nations and such other organisation as the Council may determine.

DONE at Dar es Salaam Tanzania this15th....., day of **February**, 2013.

IN WITNESS WHEREOF the undersigned have appended their signatures hereto:

For and on behalf of the
Republic of Uganda

For and on behalf of the
Republic of Burundi

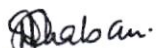
For and on behalf of the
Republic of Kenya

For and on behalf of
the United Republic of
Tanzania

For and on behalf of the
Republic of Rwanda


CRISPUS O. W.
RYYONGA
MINISTER OF
DEFENCE

C P P GABRIEL
NIZIGAMA
MINISTER FOR
PUBLIC SECURITY


HON. DR NAOMI
SHAABAN
MINISTER FOR
GENDER,
CHILDREN AND
SOCIAL
DEVELOPMENT


BERNARD
KAMILLIUS MEMBE
MINISTER OF
FOREIGN AFFAIRS


SHEIKH MUSA FAZIR
HARERIMANA
MINISTER OF
INTERNAL
SECURITY



PAPER ON RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA/GHANA AND KENYA/NIGER

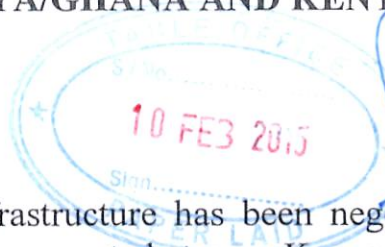
1.0 Background Information

The Ministry of Transport and Infrastructure has been negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate designated scheduled air operators especially Kenya Airways to offer international air services and expand their existing route network, in addition to allowing foreign carriers to access the Kenyan market. The Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority (KCAA), Kenya Airports Authority (KAA), Kenya Tourism Board (KTB) and Kenya Airways (KQ).

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and equal opportunity and reciprocity for other States.

The Agreements enable airlines to expand their existing route networks by directly operating to other markets. In addition, where airlines are unable to offer services the Agreements allow them to enter into Commercial Arrangements especially code share agreements which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations by offering passengers seamless connectivity.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licences; Aviation Safety and Security; Customs Duties and other Charges; amongst others.



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In order to operationalize the Agreements it is normal practise for the two Parties to sign a Memorandum of Understanding (MoU) that gives force to the Agreements as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

2.0 Status of the Kenya/Ghana Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Ghana was negotiated and initialled on 31st May, 2006. In order to operationalize the Agreement the delegations signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

2.1 The Kenya/Ghana Bilateral Air Services Agreement

The Agreement is modelled on the ICAO template Agreement and is based on the Yamoussoukro Decision. The Agreement is liberal and enables airlines to operate between the two States without any restrictions.

Currently, Kenya Airways operates 7 Weekly frequencies to Accra, Ghana and is keen on increasing to fourteen (14) frequencies. In order to meet the increased demand for service the Airline is changing the equipment used on the sector to a larger aircraft. There is no Ghanaian airline operating on the route.

3.0 Status of the Kenya/Niger Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Niger was negotiated and initialled on 9th May, 2013. In order to operationalize the Agreement the delegations signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation on the same date.

3.1 The Kenya/Niger Bilateral Air Services Agreement

The Agreement is modelled on the ICAO template Agreement and is based on the Yamoussoukro Decision. The Agreement is liberal and enables airlines to operate between the two States without any restrictions.

Currently, there are no airlines from either State operating scheduled air services between the two countries.

Attached are matrices indicating the various Articles in the two Agreements.

KENYA/GHANA BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definition	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on YD and is liberal.
Article 3	Designation and Authorization	Provides for multiple designation of airlines including multinational African Carriers. The Article is based on YD and is liberal.
Article 4	Validity of Certificates	The Article reaffirms the Parties obligation to recognize the validity of certificates of airworthiness, competency and licenses issued by the other Party, so long as they meet the minimum standards.
Article 5	Exemption From Customs Duty	The Article grants on reciprocity basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 6	Compliance With Laws and Regulations	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 7	Aviation Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 8	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 9	Representation	The Article provides for designated carriers to establish offices in the territory of the other Party for promotion of air transportation and sale of air tickets and other facilities necessary for the provision of air transportation. The Article is liberal in the Agreement.
Article 10	Competition Rules	Parties reaffirm to ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.
Article 11	Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 12	Tariffs	The Article stipulates that tariffs applicable between the two Parties shall be established at reasonable levels. Regard shall be paid to the cost of operation, interest of users, reasonable profit, class of service and when deemed necessary the tariffs of other airlines operating on the routes indicated in the Annex.
Article 13	User Charges	The Articles Provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 14	Transfer of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Consultation	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence. Amendments to the Agreement may be made as and when necessary by the two Parties.

Article 16	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 17	Arbitration	Article provides for process of arbitration and the nature as well as the period within which specific actions are to be taken. They reaffirm to comply with the Award of the tribunal. Retaliatory measures shall to be taken against airlines of a Party if it does not comply with the Award.
Article 18	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 19	Effects of Multilateral Air Transport Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by Provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 20	Registration of Agreements	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 21	Amendment	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 22	Ratification	The Article provides for ratification and deposition of the Agreement and other instruments of ratification with the International Civil Aviation Organization (ICAO).
Article 23	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for

			termination and the period it takes to be effective.
Article 24	Entry Force	Into	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

KENYA/NIGER BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definition	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Rights and Privileges of Designated Airlines	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on Yamoussoukro Decision (YD) and is liberal.
Article 3	Designation and Authorization	Provides for multiple designation of airlines. The Article is based on YD and is liberal.
Article 4	Revocation and Suspension of Operating Authorization	The Article stipulates the circumstances under which operating authorization may be revoked or suspended by either of the Contracting Parties.
Article 5	Applicability of National Laws and regulations	The Article reaffirms the applicability of the national laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, concerning passengers, crew, mail and cargo.
Article 6	Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 7	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.
Article 8	Fair Competition	Parties reaffirm to ensure fair and equal opportunity on a non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.

Article 9	Pricing	Article provides for prices for air transportation to be set by designated airlines based on the market forces of demand and supply. Parties shall protect consumers from unreasonably high prices as well as airlines from artificially low prices.
Article 10	Exemption From Customs Duties, Taxes, Inspection Fees, and Other Similar Charges	Article grants on reciprocal basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 11	User Charges	The Article provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 12	Commercial Opportunities	The Article provides for the right of designated airlines to establish offices in the territory of the other Party, transfers earnings, and entrance into cooperative arrangements such as code share and blocked space.
Article 13	Submission of Time Table	The Article provides for the need for designated airlines to submit flight schedules within stipulated period to the aeronautical authorities of either party for approval prior to commencement of operations.
Article 14	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 15	Settlement of Disputes	The Article provides for procedure for dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.

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Article 19	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period it takes to be effective.
Article 20	Power of Supersession	The Article provides for supersession of the previous Air Services Agreement
Article 21	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.



PAPER ON RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN KENYA/GHANA AND KENYA/NIGER

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The Agreements enable airlines to expand their existing route networks by directly operating to other markets. In addition, where airlines are unable to offer services the Agreements allow them to enter into Commercial Arrangements especially code share agreements which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations by offering passengers seamless connectivity.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licences; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize the Agreements it is normal practise for the two Parties to sign a Memorandum of Understanding (MoU) that gives force to the Agreements as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

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Article 2	Grant of Rights	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on YD and is liberal.
Article 3	Designation and Authorization	Provides for multiple designation of airlines including multinational African Carriers. The Article is based on YD and is liberal.
Article 4	Validity of Certificates	The Article reaffirms the Parties obligation to recognize the validity of certificates of airworthiness, competency and licenses issued by the other Party, so long as they meet the minimum standards.
Article 5	Exemption From Customs Duty	The Article grants on reciprocity basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 6	Compliance With Laws and Regulations	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 7	Aviation Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 8	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 9	Representation	The Article provides for designated carriers to establish offices in the territory of the other Party for promotion of air transportation and sale of air tickets and other facilities necessary for the provision of air transportation. The Article is liberal in the Agreement.
Article 10	Competition Rules	Parties reaffirm to ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.
Article 11	Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 12	Tariffs	The Article stipulates that tariffs applicable between the two Parties shall be established at reasonable levels. Regard shall be paid to the cost of operation, interest of users, reasonable profit, class of service and when deemed necessary the tariffs of other airlines operating on the routes indicated in the Annex.
Article 13	User Charges	The Articles Provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 14	Transfer of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Consultation	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence. Amendments to the Agreement may be made as and when necessary by the two Parties.

Article 16	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 17	Arbitration	Article provides for process of arbitration and the nature as well as the period within which specific actions are to be taken. They reaffirm to comply with the Award of the tribunal. Retaliatory measures shall to be taken against airlines of a Party if it does not comply with the Award.
Article 18	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 19	Effects of Multilateral Air Transport Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by Provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 20	Registration of Agreements	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 21	Amendment	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 22	Ratification	The Article provides for ratification and deposition of the Agreement and other instruments of ratification with the International Civil Aviation Organization (ICAO).
Article 23	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for

		termination and the period it takes to be effective.
Article 24	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.

KENYA/NIGER BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definition	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Rights and Privileges of Designated Airlines	The Article grants on reciprocal basis the first, second, third, fourth and fifth freedoms of the air to each of the Contracting Parties. The Article is based on Yamoussoukro Decision (YD) and is liberal.
Article 3	Designation and Authorization	Provides for multiple designation of airlines. The Article is based on YD and is liberal.
Article 4	Revocation and Suspension of Operating Authorization	The Article stipulates the circumstances under which operating authorization may be revoked or suspended by either of the Contracting Parties.
Article 5	Applicability of National Laws and regulations	The Article reaffirms the applicability of the national laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, concerning passengers, crew, mail and cargo.
Article 6	Safety	The Article provides for procedure to be followed when safety standards being maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The Article is based ICAO Annex 19.
Article 7	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.
Article 8	Fair Competition	Parties reaffirm to ensure fair and equal opportunity on a non-discriminatory basis for the designated airlines to effectively compete in providing air transport services in their respective territories.

Article 9	Pricing	Article provides for prices for air transportation to be set by designated airlines based on the market forces of demand and supply. Parties shall protect consumers from unreasonably high prices as well as airlines from artificially low prices.
Article 10	Exemption From Customs Duties, Taxes, Inspection Fees, and Other Similar Charges	Article grants on reciprocal basis exemption from paying customs duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services.
Article 11	User Charges	The Article provides for User charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 12	Commercial Opportunities	The Article provides for the right of designated airlines to establish offices in the territory of the other Party, transfers earnings, and entrance into cooperative arrangements such as code share and blocked space.
Article 13	Submission of Time Table	The Article provides for the need for designated airlines to submit flight schedules within stipulated period to the aeronautical authorities of either party for approval prior to commencement of operations.
Article 14	Submission of Statistics	The Parties reaffirm to supply at the request to the other Party's aeronautical authorities, periodic or statements of statistics for purpose of reviewing operations of designated airlines.
Article 15	Settlement of Disputes	The Article provides for procedure for dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.

Article 16	Consultations	Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. Consultation may be made through discussions or correspondence.
Article 17	Registration of Agreements	The Article provides for registration of the Agreement, its amendments and any exchange of notes relating to the Agreement, with the International Civil Aviation Organization (ICAO) as the repository.
Article 18	Amendments	The Article provides for amendments to be made on Provisions of the Agreement. It describes the procedure of amendment and gives the aeronautical authorities of the Parties the right to agree directly on any amendment to the Annex of the Agreement.
Article 19	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period it takes to be effective.
Article 20	Power of Supersession	The Article provides for supersession of the previous Air Services Agreement
Article 21	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.



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HARAMBEE AVENUE
P.O. Box 30551-00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

Ref. **MFA/ADM/1/9A VOL.XXXII (75)**

November 18, 2015



The Clerk
The National Assembly
NAIROBI.

**RATIFICATION OF THE WORLD TRADE ORGANIZATION (WTO)
AGREEMENT ON TRADE FACILITATION**

We write further to our letter Ref. No. MFA.ADM.1/9A VOL. XXXII (69) dated 13th November, 2015 on the above subject matter (copy attached).

Enclosed herein please find thirty (30) copies of the Agreement on Trade Facilitation adopted at the 9th WTO Ministerial Conference held in Bali, Indonesia in December, 2013.

A handwritten signature in blue ink that appears to read 'Edith K. Ngungu'.

Edith K. Ngungu
FOR: PRINCIPAL SECRETARY

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Fax +254-20-2240066/3341935
E-mail: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and title



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NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

MFA.ADM. 1/9A VOL. XXXII (69)

13th November, 2015

Ref No: MFA/ADM/1/9A/VOL/XXXII/69/15

The Clerk

The National Assembly

NAIROBI

CABINET MEMORANDUM ON RATIFICATION OF THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON TRADE FACILITATION

The above subject matter refers.

The WTO Trade facilitation Agreement was adopted by the WTO Members at the 9th WTO Ministerial Conference, which was held in Bali, Indonesia in December 2013. The Agreement will come into effect upon its ratification by 2/3 of the WTO members.

Kenya will be hosting the 10th Ministerial Conference of the WTO (MC10) in December 2015. As the Chair of MC10, the Cabinet Secretary for Foreign Affairs and International Trade is mandated to encourage other WTO members to ratify the Agreement for it to come into force by the time the Conference takes place.

Due to the strategic importance of the ratification of the WTO Agreement by Kenya, the Ministry kindly requests for parliamentary approval to enable Kenya ratify the Agreement.

A handwritten signature in black ink, appearing to be 'Dan Ochien'g', written over a circular stamp.

Dan Ochien'g
FOR: PRINCIPAL SECRETARY



URGENT



THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

STATE HOUSE

Ref. No. **OP/CAB.58/4A**
and date

SECRET

6th

Eng. (Dr.) Karanja Kibicho, CBS ✓
Principal Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI

Dr. Kamau Thugge, EBS
Principal Secretary
National Treasury
NAIROBI

Dear

Eng. Kibicho

**RE: CABINET MEMORANDUM ON RATIFICATION OF THE WORLD
TRADE ORGANIZATION (WTO) AGREEMENT ON TRADE
FACILITATION**

I refer to the **Seventh Cabinet Meeting 2015**, held on **6th November, 2015**, during which Cabinet Memorandum **CAB(15)89**, jointly submitted by the Cabinet Secretary for Foreign Affairs & International Trade, Cabinet Secretary for the National Treasury, and the Attorney-General was presented and discussed.

I wish to inform you that Cabinet **noted** the contents of the Memorandum and:

- (i) **Approved** the ratification of the World Trade Organization (WTO) Agreement on Trade Facilitation Agreement.
- (ii) **Directed** the Cabinet Secretary for Foreign Affairs & International Trade to submit the Cabinet Memorandum to the National Assembly for consideration and approval of ratification of the Trade Facilitation Agreement.
- (iii) **Directed** the Cabinet Secretary for the National Treasury avail finances for Ratification of the Trade Facilitation Agreement.

SECRET

SECRET

- (iv) **Directed** the Cabinet Secretary for the National Treasury, Cabinet Secretary for Foreign Affairs & International Trade and the Attorney-General to take appropriate action.

Please proceed and initiate action as directed by the Cabinet.

Yours

*Sincerely,
J. Kinyua*

JOSEPH K. KINYUA, CBS
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Copy to:

Amb. Amina C. Mohamed, CBS, CAV
Cabinet Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI.

Mr. Henry K. Rotich
Cabinet Secretary
The National Treasury
NAIROBI.

SECRET

D/K/P

660

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HARAMBEE AVENUE
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NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

MFA.ADM. 1/9A VOL. XXXII (69)

13th November, 2015

Ref No.....

The Clerk
The National Assembly
NAIROBI

*Mr. Njoroge
This should be brought
to the attention of H.R.C
this evening
JK
17/11*

CABINET MEMORANDUM ON RATIFICATION OF THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON TRADE FACILITATION

The above subject matter refers.

The WTO Trade facilitation Agreement was adopted by the WTO Members at the 9th WTO Ministerial Conference, which was held in Bali, Indonesia in December 2013. The Agreement will come into effect upon its ratification by 2/3 of the WTO members.

Kenya will be hosting the 10th Ministerial Conference of the WTO (MC10) in December 2015. As the Chair of MC10, the Cabinet Secretary for Foreign Affairs and International Trade is mandated to encourage other WTO members to ratify the Agreement for it to come into force by the time the Conference takes place.

Due to the strategic importance of the ratification of the WTO Agreement by Kenya, the Ministry kindly requests for parliamentary approval to enable Kenya ratify the Agreement.

Dan Ochien'g
FOR: PRINCIPAL SECRETARY

*2/1/15
Kii*

*Mr. R. Kainu
Kindly inform the Ministry (Call Mr. Ochieng)
to submit the WTO Trade
Agreement to us formally for processing, per,
in accordance with the legal procedure of treaties Act,
Urgently. You can explain to process to him.
Following. so they can comment on the process in week. Dec. 16-18
Signed: S. Njoroge
17/11*

Received
17/11/2015 - 5:30pm
R. Kainu



URGENT



THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
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STATE HOUSE

Ref. No. **OP/CAB.58/4A**
and date

SECRET

6th

Eng. (Dr.) Karanja Kibicho, CBS ✓
Principal Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI

~~**Dr. Kamau Thugge, EBS**
Principal Secretary
National Treasury
NAIROBI~~

Dear

Eng. Kibicho

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SECRET

SECRET

- (iv) **Directed** the Cabinet Secretary for the National Treasury, Cabinet Secretary for Foreign Affairs & International Trade and the Attorney-General to take appropriate action.

Please proceed and initiate action as directed by the Cabinet.

Yours

*Sincerely,
Joseph K. Kinyua*

JOSEPH K. KINYUA, CBS
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Copy to:

Amb. Amina C. Mohamed, CBS, CAV
Cabinet Secretary
Ministry of Foreign Affairs and International Trade
NAIROBI.

Mr. Henry K. Rotich
Cabinet Secretary
The National Treasury
NAIROBI.

SECRET



11 December 2013

(13-6825)

Page: 1/29

**Ministerial Conference
Ninth Session
Bali, 3-6 December 2013**

AGREEMENT ON TRADE FACILITATION

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Decides as follows:

1. We hereby conclude the negotiation of an Agreement on Trade Facilitation (the "Agreement"), which is annexed hereto, subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.
2. We hereby establish a Preparatory Committee on Trade Facilitation (the "Preparatory Committee") under the General Council, open to all Members, to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force. In particular, the Preparatory Committee shall conduct the legal review of the Agreement referred to in paragraph 1 above, receive notifications of Category A commitments, and draw up a Protocol of Amendment (the "Protocol") to insert the Agreement into Annex 1A of the WTO Agreement.
3. The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.

ANNEX

AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the Doha Round of Multilateral Trade Negotiations;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration and Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004, as well as paragraph 33 and Annex E of the Hong Kong Ministerial Declaration;

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues:

Hereby *agree* as follows:

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1. Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- a. Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- b. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- c. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- d. Rules for the classification or valuation of products for customs purposes;
- e. Laws, regulations and administrative rulings of general application relating to rules of origin;
- f. Import, export or transit restrictions or prohibitions;
- g. Penalty provisions against breaches of import, export or transit formalities;
- h. Appeal procedures;
- i. Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- j. Procedures relating to the administration of tariff quotas.

1.2. Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2 Information Available Through Internet

2.1. Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

- a. A description¹ of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;
- b. The forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- c. Contact information on enquiry points.

2.2. Whenever practicable, the description referred to in subparagraph 2.1 a. shall also be made available in one of the official languages of the WTO.

2.3. Members are encouraged to make available further trade related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

3 Enquiry Points

3.1. Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1 a.

3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.

3.4. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

4 Notification

4.1. Each Member shall notify the Committee of:

- a. The official place(s) where the items in subparagraphs 1.1 a. to j. have been published; and
- b. The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION

1 Opportunity to Comment and Information before Entry into Force

1.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

¹ Each Member has the discretion to state on its website the legal limitations of this description.

1.2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

2 Consultations

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

ARTICLE 3: ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

- a. is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or
- b. has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.

6. Each Member shall publish, at a minimum:

- a. the requirements for the application for an advance ruling, including the information to be provided and the format;
- b. the time period by which it will issue an advance ruling; and
- c. the length of time for which the advance ruling is valid.

7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.²

8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

² Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

9. Definitions and scope:

- a. An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - i. the good's tariff classification, and
 - ii. the origin of the good;³
- b. In addition to the advance rulings defined in subparagraph 3.9 a., Members are encouraged to provide advance rulings on:
 - i. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - ii. the applicability of the Member's requirements for relief or exemption from customs duties;
 - iii. the application of the Member's requirements for quotas, including tariff quotas; and
 - iv. any additional matters for which a Member considers it appropriate to issue an advance ruling.
- c. An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
- d. A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: APPEAL OR REVIEW PROCEDURES

1 Right to Appeal or Review

1.1. Each Member shall provide that any person to whom customs issues an administrative decision⁴ has the right, within its territory to:

- a. administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;
and/or
- b. judicial appeal or review of the decision.

1.2. The legislation of each Member may require administrative appeal or review to be initiated prior to judicial appeal or review.

1.3. Members shall ensure that their appeal or review procedures are carried out in a non-discriminatory manner.

³ It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

⁴ An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1.1 a.

1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 a. is not given either i. within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.⁵

1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

- a. each Member may, as appropriate, issue the notification or guidance based on risk.
- b. each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.
- c. each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.
- d. when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2 Detention

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

3 Test Procedures

3.1. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.

3.3. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

⁵ Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION**1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

1.1. The provisions of paragraph 6.1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with importation or exportation of goods.

1.2. Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4. Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2 Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

2.1. Fees and charges for customs processing:

- i. shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- ii. are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3 Penalty Disciplines

3.1. For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement.

3.2. Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4. Each Member shall ensure that it maintains measures to avoid:

- i. conflicts of interest in the assessment and collection of penalties and duties; and
- ii. creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5. Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6. When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7. The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

1.1. Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2. Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1. Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2. As a condition for such release, a Member may require:

- a. payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or
- b. a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

3.3. Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

3.4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5. The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6. Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

4 Risk Management

4.1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4.3. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments.

Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

4.4. Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5 Post-clearance Audit

5.1. With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2. Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

5.3. Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4. Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

6 Establishment and Publication of Average Release Times

6.1. Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the WCO Time Release Study.⁶

6.2. Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

7 Trade Facilitation Measures for Authorized Operators

7.1. Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- a. an appropriate record of compliance with customs and other related laws and regulations;
- b. a system of managing records to allow for necessary internal controls;
- c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and
- d. supply chain security.

⁶ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

The specified criteria to qualify as an operator shall not:

- a. be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
- b. to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:⁷

- a. low documentary and data requirements as appropriate;
- b. low rate of physical inspections and examinations as appropriate;
- c. rapid release time as appropriate;
- d. deferred payment of duties, taxes, fees and charges;
- e. use of comprehensive guarantees or reduced guarantees;
- f. a single customs declaration for all imports or exports in a given period; and
- g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4. Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5. In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

7.6. Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8 Expedited Shipments

8.1. Each Member shall adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.⁸ If a Member employs criteria⁹ limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 a. – d. to its expedited shipments:

- a. provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;
- b. submit in advance of the arrival of an expedited shipment the information necessary for release;
- c. be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2 a. – d.;
- d. maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- e. provide expedited shipment from pick-up to delivery;
- f. assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- g. have a good record of compliance with customs and other related laws and regulations;

⁷ A measure listed in sub-paragraphs a.-g. will be deemed to be provided to authorized operators if it is generally available to all operators.

⁸ In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Member to introduce separate expedited release procedures.

⁹ Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

- h. comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2. Subject to paragraphs 8.1 and 8.3, Members shall:

- a. minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible, provide for release based on a single submission of information on certain shipments;
- b. provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- c. endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and
- d. provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3. Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

9 Perishable Goods¹⁰

9.1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Member shall:

- a. provide for the release of perishable goods under normal circumstances within the shortest possible time; and
- b. provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3. Each Member shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

¹⁰ For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

ARTICLE 8: BORDER AGENCY COOPERATION

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

- i. alignment of working days and hours;
- ii. alignment of procedures and formalities;
- iii. development and sharing of common facilities;
- iv. joint controls;
- v. establishment of one stop border post control.

ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT**1 Formalities and Documentation Requirements**

1.1. With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

- a. are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- b. are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- c. are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- d. are not maintained, including parts thereof, if no longer required.

1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2 Acceptance of Copies

2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.¹¹

3 Use of International Standards

3.1. Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.

3.2. Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3. The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4 Single Window

4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3. Members shall notify to the Committee the details of operation of the single window.

4.4. Members shall, to the extent possible and practical, use information technology to support the single window.

5 Pre-shipment Inspection

5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.¹²

6 Use of Customs Brokers

6.1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers.

6.2. Each Member shall notify and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.

6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

¹¹ Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

¹² This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

7 Common Border Procedures and Uniform Documentation Requirements

7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2. Nothing in this Article shall prevent a Member from:

- a. differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- b. differentiating its procedures and documentation requirements for goods based on risk management;
- c. differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- d. applying electronic filing or processing; or
- e. differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

8 Rejected Goods

8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9 Temporary Admission of Goods/Inward and Outward Processing

a. Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

b. Inward and Outward Processing

- i. Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.
- ii. For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.
- iii. For the purposes of this Article, the term "outward processing" means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:

- a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,
- b. be applied in a manner that would constitute a disguised restriction on traffic in transit.

2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.

4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:

- a. identify the goods; and
- b. ensure fulfillment of transit requirements.

7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.

9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.

11.1. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary¹³ instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

11.2. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

11.3. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

¹³ Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit.

11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

12. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:

- i. charges;
- ii. formalities and legal requirements; and
- iii. the practical operation of transit regimes.

13. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

ARTICLE 12: CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.¹⁴

1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

2 Exchange of Information

2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:

- a. the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;

¹⁴ Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

- b. the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;
- c. where required by the requested Member, provide confirmation¹⁵ of the verification where appropriate.
- d. the specific information or documents requested;
- e. the identity of the originating office making the request;
- f. reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;

4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

5 Protection and confidentiality

5.1. The requesting Member shall, subject to paragraph 5.2:

- a. hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 b. and 6.1 c.;
- b. provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- c. not disclose the information or documents without the specific written permission of the requested Member;
- d. not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- e. respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- f. upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

6 Provision of information

6.1. Subject to the provisions of this article, the requested Member shall promptly:

- a. respond in writing, through paper or electronic means;
- b. provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- c. if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the

¹⁵ This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

- d. confirm that the documents provided are true copies;
- e. provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

7 Postponement or refusal of a request

7.1. A requested Member may postpone or refuse part or all of a request to provide information, and shall so inform the requesting Member of the reasons for doing so, where:

- a. it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member.
- b. its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.
- c. the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.
- d. the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.
- e. the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative burden

9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

Requested Members shall not be required to:

- a. modify the format of their import or export declarations or procedures;

- b. call for documents other than those submitted with the import or export declaration as specified in paragraph 6 c.;
- c. initiate enquiries to obtain the information;
- d. modify the period of retention of such information;
- e. introduce paper documentation where electronic format has already been introduced;
- f. translate the information;
- g. verify the accuracy of the information;
- h. provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11 Unauthorized use or disclosure

11.1. In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and:

- a. take necessary measures to remedy the breach;
- b. take necessary measures to prevent any future breach; and
- c. notify the requested Member of the measures taken under sub-paragraphs a. and b. above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and regional agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1 COMMITTEE ON TRADE FACILITATION

1.1. A Committee on Trade Facilitation is hereby established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the

best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- a. attend meetings of the Committee; and
- b. discuss specific matters related to the implementation of this Agreement.

1.6. The Committee shall review the operation and implementation of this Agreement 4 years from its entry into force, and periodically thereafter.

1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement, with a view to reaching a mutually satisfactory solution promptly.

2 NATIONAL COMMITTEE ON TRADE FACILITATION

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1 General Principles

1.1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

1.2. Assistance and support for capacity building¹⁶ should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

1.3. Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

1.4. These principles shall be applied through the provisions set out in Section II.

2 CATEGORIES OF PROVISIONS

2.1. There are three categories of provisions:

- a. Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.
- b. Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.
- c. Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in paragraph 4.

2.2. Each developing country and least developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

3 Notification and Implementation of Category A

3.1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

3.2. A least developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

¹⁶ For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

4 Notification of Definitive Dates for Implementation of Category B and Category C

4.1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this paragraph.

Developing Country Member Category B

- a. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category B and corresponding indicative dates for implementation.¹⁷
- b. No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

- c. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category C and corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement¹⁸.
- d. Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 10.1 and information submitted pursuant to sub-paragraph c. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.¹⁹ The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.
- e. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.1 d., donor Members and respective developing country Members shall inform the Committee on progress in the provision of assistance and support. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

4.2. With respect to those provisions that a least developed country Member has not designated under Category A, least developed country Members may delay implementation in accordance with the process set forth in this paragraph.

Least Developed Country Member Category B

- a. No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions and may notify corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least developed country Members.
- b. No later than two years after the notification date stipulated under sub-paragraph a. above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least developed country Member, before this deadline, believes it requires additional time to notify its

¹⁷ Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation.

¹⁸ Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

¹⁹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 9.3.

definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least Developed Country Member Category C

- c. For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement each least developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least developed country Members.
- d. One year after the date stipulated in sub-paragraph c. above, least developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.²⁰
- e. Within two years after the notification under sub-paragraph d. above, least developed country Members and relevant donor Members, taking into account information submitted pursuant to sub-paragraph d. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.²¹ The participating least developed country Member shall promptly inform the Committee of such arrangements. The least developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- f. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.2 e., relevant donor Members and respective least developed country Members shall inform the Committee on progress in the provision of assistance and support. Each least-developed country Member shall, at the same time, notify its list of definitive dates for implementation.

4.3. Developing country Members and least developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 4.1 and 4.2 because of the lack of donor support or lack of progress in the provision of assistance and support should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

4.4. Three months before the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 4.3 or paragraph 4.1 b., or in the case of a least developed country Member paragraph 4.2 b., to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., or extended by paragraph 4.3.

4.5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C in accordance with paragraphs 4.1, 4.2 or 4.3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4.4, thereby making these annexes an integral part of this Agreement.

²⁰ Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

²¹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 9.3.

5 Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

5.1.

- a. A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under paragraph 4.1 b. or 4.1 e., or in the case of a least-developed country Member paragraph 4.2 b. or 4.2 f., and should notify the Committee. Developing countries shall notify the Committee no later than 120 days before the expiration of the implementation date. Least developed countries shall notify the Committee no later than 90 days before such date.
- b. The notification to the Committee shall indicate the new date by which the developing country Member or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance not earlier anticipated or additional assistance to help build capacity.

5.2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

5.3. Where a developing country or least developed country Member considers that it requires a first extension longer than that provided for in paragraph 5.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in 5.1 b. no later than 120 days in respect of a developing country and 90 days in respect of a least developed country before the expiration of the original definitive implementation date or that date as subsequently extended.

5.4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

6 Implementation of Category B and Category C

6.1. In accordance with paragraph 1.2, if a developing country Member or a least developed country Member, having fulfilled the procedures set forth in sub-paragraph 4.1 or 4.2 and in paragraph 5, and where an extension requested has not been granted or where the developing country Member or least developed country Member otherwise experiences unforeseen circumstances that prevents an extension being granted under paragraph 5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.

6.2. The Trade Facilitation Committee shall immediately establish an Expert Group, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.

6.3. The Expert Group shall be composed of five independent persons, highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least developed country Member is involved, the Expert Group shall include at least one national from a least developed country. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.

6.4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Trade Facilitation Committee. When considering the Expert Group's recommendation concerning a least developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

6.5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For the least developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply on the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the first Committee meeting set out above, whichever is the earlier.

6.6. Where a least developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in paragraph 6.

7 Shifting between Categories B and C

7.1. Developing Country Members and least developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the assistance and support required to build capacity.

7.2. In the event that additional time is required to implement a provision as a result of it having been shifted from Category B to Category C, the Member may:

- a. use the provisions of paragraph 5, including the opportunity for an automatic extension; or
- b. request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under paragraph 6; or
- c. in the case of a least developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least developed country continues to have recourse to paragraph 5. It is understood that assistance and support for capacity building is required for a least developed country Member so shifting.

8 Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes

8.1. For a period of 2 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

8.2. For a period of 6 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least developed country Member concerning any provision that the Member has designated in Category A.

8.3. For a period of 8 years after implementation of a provision under Category B and C by a least developed country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least developed country Member concerning those provisions.

8.4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least developed country Members.

8.5. Each Member shall, upon request, during the grace period allowed under this paragraph, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

9 Provision of Assistance for Capacity Building

9.1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least developed country Members to implement the provisions of Section I of this Agreement.

9.2. Given the special needs of least developed country Members, targeted assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and in coherence with the principles of technical assistance and capacity building as referred to in paragraph 9.3, development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.

9.3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:

- a. take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- b. include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- c. ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
- d. promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - i. coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - ii. for least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
 - iii. Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.
- e. encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
- f. encourage developing countries Members to provide capacity building to other developing and least developed country and consider supporting such activities, where possible.

9.4. The Committee shall hold at least one dedicated session per year to:

- a. discuss any problems regarding implementation of provisions or sub-parts of provisions;
- b. review progress in the provision of technical assistance and capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate technical assistance and capacity building;
- c. share experiences and information on ongoing assistance and implementation programs, including challenges and successes;
- d. review donor notifications as set forth in paragraph 10; and
- e. review the operation of paragraph 9.2.

10 Information on Assistance to be Submitted to the Committee

10.1. To provide transparency to developing and least developed Members on the provision of assistance and support for implementation of Section I, each donor Member assisting developing country and least developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding twelve months and, where available, that is committed in the next twelve months²²:

- a. a description of the assistance and support for capacity building;
- b. the status and amount committed/disbursed;
- c. procedures for disbursement of the assistance and support;
- d. the beneficiary country, or, where necessary, the region; and
- e. the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of OECD members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.2. Donor Members assisting developing country and least developed country Members shall submit to the Committee:

- a. contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of the provisions of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and
- b. information on the process and mechanisms for requesting assistance and support.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.3. Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance and support shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

10.4. Members may provide the information in paragraphs 10.2 and 10.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

10.5. The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 10.1, 10.2 and 10.4.

²² The information provided will reflect the demand driven nature of the provision of technical assistance.

FINAL PROVISIONS

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.
2. All provisions of this Agreement are binding on all Members.
3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.
4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.
5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Agreement on Trade Facilitation including through the establishment and use of regional bodies.
6. Notwithstanding the General interpretative note to Annex 1A, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.
7. All exceptions and exemptions²³ under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement establishing the WTO and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.
8. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.
9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
10. The Category A commitments of developing and least developed country Members annexed to this Agreement in accordance with paragraphs 3.1 and 3.2 of Section II shall constitute an integral part of this Agreement.
11. The Category B and C commitments of developing and least developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 4.5 of Section II shall constitute an integral part of this Agreement.

²³ This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.

ANNEX 1: FORMAT FOR NOTIFICATION UNDER ARTICLE 10.1

Donor Member:

Period covered by the notification:

Description of the technical and financial assistance and capacity building resources	Status and amount committed/disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance

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CATEGORY A

**CABINET MEMORANDUM ON THE RATIFICATION OF THE
WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON
TRADE FACILITATION**

(Submitted by the Cabinet Secretary for Foreign Affairs and
International Trade)

1.0 INTRODUCTION

Kenya is an active member of the multilateral trading system since signing the General Agreement on Tariffs and Trade (GATT) on 2nd February 1964. The GATT had been in existence since 1947. Kenya was among the founding members of the World Trade Organization (WTO) when the Marrakesh Agreement, which established the Organization, was signed in Morocco on 15 April 1994 and came to force on 1st January 1995. With a membership of 163 countries, WTO is the only global international organization dealing with rules of trade among nations, to assist producers of goods and services, exporters, and importers to conduct their business.

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Committed to safeguarding the norms and values for a fair multilateral trading system, Kenya is signatory to all WTO multilateral agreements. These include the GATT, the Agreement on Agriculture (AOA); the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS).

2.0 OBJECTIVE OF THE MEMORANDUM

The purpose of this Memorandum is to inform the Cabinet of the adoption of the Agreement on Trade Facilitation (TFA) by members of the World Trade Organization (WTO), and to seek Cabinet approval for Kenya to ratify the Agreement on Trade Facilitation.

3.0 BACKGROUND

The WTO Agreement on Trade Facilitation (TFA) is the most recent of the WTO Agreements to be concluded under the Doha Round of Trade negotiations. It was adopted at the 9th WTO Ministerial Conference held in Bali, Indonesia in December, 2013.

The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

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The TFA will enter into force once two-thirds of the WTO membership has formally accepted the Agreement. So far, sixteen (16) WTO members have formally accepted the TFA, including three African countries – Mauritius, Botswana and Niger.

4.0 PROBLEM ANALYSIS AND JUSTIFICATION

Traders from both developing and developed countries have long pointed to the "red tape" and inefficiencies that they encounter when moving goods across borders. Furthermore documentation requirements often lack transparency and harmony, a problem often compounded by the lack of cooperation between traders and government agencies. Despite advances in information technology, automatic data submission is still not a common practice at most borders.

The United Nations Conference on Trade and Development (UNCTAD) estimates that the average customs transaction involves 20–30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70 per cent of all data at least once. With the lowering of tariffs across the globe, the cost of complying with customs formalities is reported to exceed in many instances, the cost of duties to be paid. In the modern business environment of just-in-time production and delivery, traders need fast and predictable release and movement of goods.

For developing-country economies such as Kenya, inefficiencies in areas such as customs and transportation can be barriers to their integration into the global economy and may severely impair export competitiveness or

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inflow of Foreign Direct Investment (FDI). This is one of the reasons why developing-country exporters, Kenya included are increasingly advocating for the removal of administrative and non-tariff barriers.

The WTO has been addressing issues related to the facilitation of trade, although it lacked specific provisions in some areas, particularly on customs procedures, documentation, and transparency. This Agreement was therefore concluded to fill these gaps.

5.0 CONSTITUTIONAL IMPLICATIONS

The ratification of the WTO Trade Facilitation Agreement does not envisage amendments to the Constitution of Kenya. However, County Governments may be expected to enact relevant laws and adopt trade regulations and measures that are in conformity with the Agreement.

6.0 EXPECTED BENEFITS OF THE AGREEMENT

The Agreement provides for simplified border measures, better coordinated border agencies and efficiency in their operations, as well as handling of import and export documents leading to faster movement of goods into and across WTO member countries, hence reducing the costs of doing business.

The establishment of customs inquiry points in all WTO member countries will enhance transparency and the flow of goods, as well as exchange of information in borders. This will curb vices such as under-invoicing and over-

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invoicing that are responsible for illicit financial flows experienced by most developing countries.

Finally, movement of goods in transit will be better managed through customs cooperation among WTO member countries, thus minimizing chances of the aforesaid goods being smuggled into the domestic market of the country of transit.

Developing Countries such as Kenya will enjoy some flexibility in the implementation of the Agreement, in accordance with the Special and Differential Treatment principle. This entails longer transition period, capacity building, and technical assistance including financial assistance.

7.0 WAY FORWARD

Kenya is a founder and active member of the World Trade Organization, having played significant roles in advancing developing countries' agenda at this trade negotiation forum. As such, Kenya will be the first African country to host the WTO Ministerial Conference (Tenth Ministerial Conference), which is the Organization's top most decision making body, in Nairobi on December 15 – 18, 2015.

The Cabinet Secretary for Foreign Affairs and International Trade is currently the Chair of the tenth Ministerial Conference (MC10) and part of her mandate is to encourage other WTO members to ratify the TFA for it to come into force as contemplated.

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In view of the above, it is recommended that the Government considers ratifying the Agreement on Trade Facilitation.

8.0 FINANCIAL IMPLICATIONS

Section III of the Agreement contains provisions that establish a Permanent Committee on Trade Facilitation at the WTO. It also requires each member to establish a National Committee to facilitate domestic coordination and implementation of the provisions of the Agreement.

Funds will be required to train personnel in charge of border agencies and expand infrastructure as prescribed by the agreement.

Kenya has already established an Interim National Committee on Trade Facilitation to coordinate the implementation of the Agreement at the national level. This Committee has to be legally constituted and funded to fulfill its domestic and international obligations. These funds are proposed to be provided through the annual Government budget.

9.0 RECOMMENDATIONS TO CABINET

Cabinet is requested to:

- a) Take note of the contents of this Memorandum;

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- b) Approve the ratification of the WTO Trade Facilitation Agreement;
- c) Direct the Cabinet Secretary for Foreign Affairs and International Trade to submit this Memorandum to the Speaker of the National Assembly for consideration and approval of ratification of the Trade Facilitation Agreement; and
- d) Direct the Cabinet Secretary for the National Treasury to note the financial Implications of the ratification and avail resources.

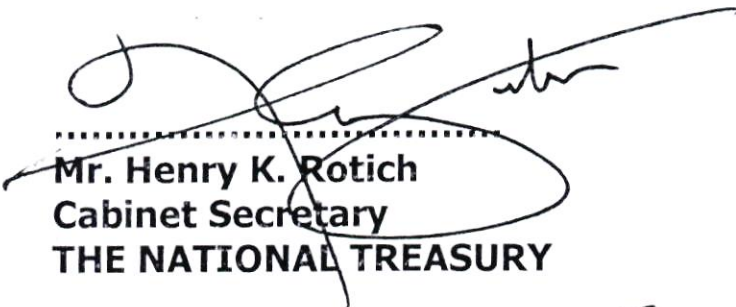
Signed

Date



21/09/15 :

.....
Amb. (Dr.) Amina C. Mohamed, CBS, CAV
Cabinet Secretary
MINISTRY OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE



5/11/2015 :

.....
Mr. Henry K. Rotich
Cabinet Secretary
THE NATIONAL TREASURY



5th November 2015 :

.....
Prof. Githu Muigai, EGH, SC
ATTORNEY GENERAL

PARLIAMENTARY PAPER ON THE RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

1.0 Background Information

The Ministry of Transport and Infrastructure takes the lead in negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Agreements are negotiated in line with the Integrated National Transport Policy, which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and on the basis of equal opportunity and reciprocity for other States.

The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services the Agreements provide for them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is normal practice for the delegations representing the concerned States to sign a Memorandum of Understanding

(MoU) that gives force to the Agreement as it awaits the signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require for the signing of the Agreement prior to entry into force.

2.0 Analysis of the Issue

The Bilateral Air Services Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014. In order to operationalize the Agreement, delegations from the two states signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

The Agreement is modeled on the ICAO template and based on equal opportunities and reciprocity. The Agreement is liberal and aimed at enabling designated airlines of either State to operate scheduled air services between their territories without any restrictions. It provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of 5th Freedom Traffic Rights, is subjected to agreement by the two aeronautical authorities.

2.1 Kenya/Viet Nam Blateral Air Services Agreement

The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014 in Ha Noi, Viet Nam (copy attached). Delegations representing the two States signed an MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement.

Kenya Airways plans to commence daily scheduled flights to Ha Noi, Viet Nam effective from 30th March, 2015 and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights to points into China from Viet Nam. Currently, there is no Viet Nameese airline operating scheduled flights into Kenya. We believe that the signing of the Agreement will give impetus to Kenya Airways to increase additional frequencies and enable Viet Nameese airlines to start operating on the sector for fair competition.

3.0 Way forward

The National Assembly grants approval for the ratification of the Air Services Agreement between Kenya and Viet Nam to enable submission of the Agreements to Parliament and finalization of the ratification process. This will enable the signing of the Air Services Agreement between Kenya and Viet Nam.

KENYA/VIETNAM BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants the first, second, third and fourth freedoms of the air on a reciprocal basis to each of the Contracting Parties.
Article 3	Designation and Authorization	The Article provides for multiple designation of airlines of both the Contracting Parties. Designation is liberal.
Article 4	Withholding revocation and limitation of authorization	The Article provides for the right to withhold the authority to operate or revoke the certificate(s) if an airline does not meet the minimum set standards.
Article 5	Application of Laws	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 6	Direct Transit	The Article reaffirms that passengers, baggage and cargo on transit shall not be screened if they don't leave their designated area at airport. However, screening can be done for aviation security, narcotics control, prevention of illegal entry or in special circumstances.
Article 7	Recognition of Certificates	Parties reaffirm to recognize Certificates of airworthiness, certificates of competency and licenses issued by the other Contracting Party and are still valid. The certificates must be equal or above the ICAO set standards.
Article 8	Aviation Safety	The Article provides for the procedure to be followed when safety standards being maintained by the other Party relating to aviation facilities, aircrew, aircraft and the operation of aircraft are inadequate. The Article is based on ICAO Annex 19.
Article 9	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 10	User Charges	The Article provides for user charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 11	Duties, Taxes and Fees	The Article grants on reciprocal basis exemption from custom duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board aircraft and being used on flight. Inspection fees and other similar charges are also exempted.
Article 12	Fair Competition	The parties reaffirm to ensures fair and equal opportunity for the designated airlines to compete in providing international air transportation governed by the Agreement.
Article 13	Establishment of Tariffs	The Article provides for designated airlines to establish tariffs based on commercial considerations in the market place such as cost of operation, characteristics of the service, interests of the users, reasonable profit and other market considerations.
Article 14	Currency Conversion and remittance of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Sale and marketing of air service product	The Article provides for the right to sell and market international air services and related products in its territory directly or through agents, and right to establish offices.
Article 16	Codesharing/Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 17	Environmental Protection	The Parties reaffirm to comply with ICAO standards and Recommended practices of Annex 16 and existing ICAO policy and guidelines on environmental protection with regard to aviation activities. (noise and carbon monoxide)
Article 18	Statistics	Parties reaffirm to supply at the request of the aeronautical authorities of the other Party, statements or statistics of passengers, cargo and

		mail for purpose of reviewing operations of designated airlines.
Article 19	Approval of schedules	The Article provides for submission of flight schedules of designated airlines to the aeronautical authorities of other Contracting Party for their approval at least 30 days prior to the operation of agreed services.
Article 20	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. A Party may request for high level meeting up to Ministerial level or escalate the consultations higher if deemed necessary.
Article 21	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 22	Amendment	The Article provides for the procedure of making amendments to the Agreement. Amendments agreed by the Contracting Parties come into effect when confirmed by an exchange of diplomatic Notes.
Article 23	Multilateral Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 24	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period the termination takes to be effective.
Article 25	Registration with ICAO	In the Article the Parties reaffirm for registration of the Agreement and its amendments with the International Civil Aviation Organization (ICAO) upon signature. ICAO is the repository.
Article 26	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.



**MEMORANDUM OF UNDERSTANDING (MOU) ON AIR
SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE
REPUBLIC OF KENYA AND THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF VIET NAM**

Delegations representing the Government of the Republic of Kenya (hereinafter referred to as The Kenya Delegation) and the Aeronautical Authority of the Socialist Republic of Viet Nam (hereinafter referred to as The Viet Nam Delegation) and hereinafter referred to collectively as "The Delegations" met in Ha Noi, Viet Nam on 6th and 7th August, 2014 for the purpose of negotiating a new Air Services Agreement and a Memorandum of Understanding.

The negotiations were held in a cordial and friendly atmosphere, characteristic of the good relations that exist between the Contracting Parties.

The list of both delegations is attached hereto as Appendix "A".

The following issues were discussed and agreed on as herein below:

1. BILATERAL AIR SERVICES AGREEMENT

Both delegations agreed to initial a new Air Services Agreement (the Agreement) attached as Appendix B.

Both delegations further agreed to recommend to their respective Governments the formal signing of the Agreement.

2. MEMORANDUM OF UNDERSTANDING

The following understanding was reached between the Delegations:

a) DESIGNATION

The Delegations agreed to adopt multi-designation of airlines from their respective countries.

b) FREQUENCY AND CAPACITY

The Delegations agreed that the capacity and frequencies to be applied on the agreed routes shall not be restricted.

c) ROUTE SCHEDULE

The Delegations agreed to adopt a liberal routes structure to be operated by the designated airlines as provided for in the Annex I to the Agreement.

d) TRAFFIC RIGHTS

Both delegations agreed that 3rd and 4th freedom traffic rights for passenger, combination and all-cargo services will continue to be freely exchanged in accordance with the provisions of the Agreement.

The delegations further agreed that, exercise of the fifth freedom traffic rights will be subject to agreement by the two aeronautical authorities.

e) CODE-SHARE ARRANGEMENTS

Both delegations agreed that designated airlines can code share with airlines of either Contracting Party. Further, designated airlines are free to code share with airlines of Third Party States as long as the third Party airlines have the underlying traffic rights on routes in question.

f) AVOIDANCE OF DOUBLE TAXATION

The Delegations agreed to urge their competent authorities to conclude an agreement for avoidance of double taxation on revenues, capital and profits arising from their respective airlines activities and income in the territory of the other Contracting Party.

g) CO-TERMINATION

The two delegations agreed that the designated airlines are free to combine points in the territory of either contracting party without cabotage.

3. ENTRY INTO FORCE OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall come into force upon signature.

Done at Ha Noi on 7th August 2014.

For the Government of The Republic
of Kenya



Mr. Benjamin Kiguhi Enyenze

For the Aeronautical Authority of
the Socialist Republic of Viet Nam



Mr. Vo Huy Cuong

LIST OF KENYAN DELEGATION

1. Chairman
Mr. Enyenze Benjamin Kiguhi
Senior Air Transport Officer
Ministry of Transport and Infrastructure
2. Members
Ms. Chesoni Joan Magonjo
State Counsel
State Law Office
3.
Mr. Owiti Peter Opiyo
Charge d'Affaire a.i
Kenya Embassy, Bangkok, Thailand
4.
Mr. Kimemia Joram Michael Kageto
Legal Counsel
Ministry of Foreign Affairs and International Trade
5.
Mr. Wanje Ezekiel Mwamure
Air Transport Officer
Kenya Civil Aviation Authority
6.
Mr. Kamau George Karuthui
Legal Officer
Kenya Airports Authority
7.
Mr. Mwangi Isaac Gitonga
Government and Industry Affairs
Kenya Airways

V. W. W.

V. W. W.

LIST OF VIETNAMESE DELEGATION

1. Chairman Mr. Vo Huy Cuong
Deputy Director General
Civil Aviation Authority of Viet Nam (CAAV)
2. Members Mr. Ngo Thanh Phuong
Deputy Director
Legal Affairs and International Cooperation Department, CAAV
3. Mr. Vu Hong Quang
Deputy Director
Air Transport Department, CAAV
4. Mrs. Le Thi Thu Ha
Official
Air Transport Department, CAAV
5. Mr. Nguyen Duc Lam
Official,
Legal Affairs and International Cooperation Department, CAAV
6. Mr. Nguyen Tien Hoang
Deputy General Manager
Vietnam Airlines

V. Cuong

V. Cuong

Appendix B

**Air Services Agreement
between
the Government of the Republic of Kenya
and
the Government of the Socialist Republic of Viet Nam**

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Air Services Agreement

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- Annex I** – Route schedules



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Preamble

The Government of the Republic of Kenya and the Government of the Socialist Republic of Viet Nam (hereinafter, "the Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:



Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of Republic of Kenya the Minister/Cabinet Secretary in charge of aviation; in the case of the Government of the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam, Ministry of Transport ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- g) "ICAO" means the International Civil Aviation Organization;
- h) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- i) "Contracting Party" is a State which has formally agreed to be bound by this agreement;
- j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- k) "territory" in relation to a State means the land areas, and in the case of the Socialist Republic of Viet Nam, it includes mainland and islands, and under sovereignty of a Contracting Party, internal waters and territorial seas, and the airspace above the said areas;
- l) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and
- m) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

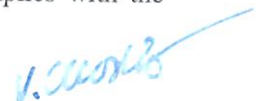


Article 2 Grant of rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Contracting Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Contracting Party;
 - b) the right to make stops in the territory of the other Contracting Party for non-traffic purposes; and
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail separately or in combination.
3. The airlines of each Contracting Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Contracting Party.

Article 3 Designation and authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airline(s) to operate the agreed services in accordance with this Agreement.
2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Contracting Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:
 - a) substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
 - b) the Contracting Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
 - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.
3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.



Article 4

Withholding, revocation and limitation of authorization

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

- a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
- b) in the event of failure of the Contracting Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
- c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 Consultations, of this Agreement.

Article 5

Application of laws

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Article 6

Direct transit

Passengers, baggage, and cargo in direct transit through the territory of any Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.



Article 7 Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Contracting Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

Article 8 Safety

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Contracting Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Contracting Party shall then take appropriate corrective action within an agreed time period. Failure by the other Contracting Party to take appropriate action within the said period or such longer period as may be agreed shall be grounds for the application of Article 4 of this Agreement to revoke or suspend operating authorisation
3. . Notwithstanding the obligation mentioned in Article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the airline of one Contracting Party on services to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its flight crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections gives rise to:
 - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
 - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention:
 the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licenses in respect of

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that aircraft or in respect of the flight crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of air aircraft operated by an airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

8. With reference to paragraph 2, if it is determined that one Contracting Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

Article 9

Aviation security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Contracting Parties adhere to.

2. The Contracting Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.

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4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Contracting Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Contracting Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Contracting Party may take interim action at any time.

Article 10

User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Contracting Party shall encourage the competent charging authorities to provide users with

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reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 21 Settlement of Disputes, to be in breach of a provision of this Article, unless:

- a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or
- b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Contracting Party shall be available for use by the airlines of the other Contracting Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

Article 11

Duties, Taxes and Fees

1. Each Contracting Party shall on the basis of reciprocity exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

- a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

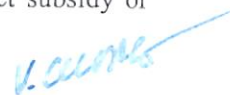


Article 12 **Fair competition**

1. Each Contracting Party agrees:
 - a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and
 - b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Contracting Party.
2. Each Contracting Party shall allow each designated airline(s) to determine the frequency and capacity of the international air service it offers, as well as the traffic demand for the air services, based on commercial considerations of the marketplace.
3. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons, consistent with Article 15 of the Convention.
4. Neither Contracting Party shall require the filing of programmes for non-scheduled flights, or operational plans by the designated airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (2) of this Article. If a Contracting Party requires filing for information purposes, it shall minimise the administrative burdens of such filing requirements and procedures on air transport intermediaries and on designated airlines of the other Contracting Party.

Article 13 **Establishment of Tariffs**

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
 - a) Prevention of unreasonably discriminatory prices or practices;
 - b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
 - c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;



d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority

a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and

b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.

5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

Article 14

Currency conversion and remittance of earnings

Each Contracting Party shall permit airline(s) of the other Contracting Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance, according to the foreign exchange regulations of the Contracting Party concerned.

Article 15

Sale and marketing of air service products

1. Each Contracting Party shall accord airlines of the other Contracting Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services, and any person shall have the right to purchase such transportation, in the currency of that territory, or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.

Article 16 Codesharing/Cooperative arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:

- a) an airline or airlines of either Contracting Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Contracting Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Contracting Parties at least 30 days before its proposed introduction.

Article 17 Environmental Protection

The Contracting Parties support the need to protect the environment by promoting the sustainable development of aviation. The Contracting Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

Article 18 Statistics

The aeronautical authorities of each Contracting Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Contracting Party.

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Article 19

Approval of schedules

1. The designated airline of each Contracting Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Contracting Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Contracting Party.

Article 20

Consultations

In the spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Contracting Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.

Article 21

Settlement of disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.



6. Either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting Party in default hereof.

Article 22 Amendment

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an exchange of diplomatic notes.

Article 23 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

Article 24 Termination

Either Contracting Party may, at any time, give notice in writing, through diplomatic channels, to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, or any shorter period of time as may be agreed by both Contracting Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

Article 25 Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

Article 26 Entry into force


This Agreement shall be applied provisionally from the date of its signature and shall enter into force on the day the last written notification is received by diplomatic note confirming that the Contracting Parties have fulfilled all respective internal procedures required for the entry into force of this Agreement.

In the witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at..., this ... Day of ... in the year ... in duplicate original copies in English and Vietnamese languages, both texts being equally authentic.

For the Government of the
Republic of Kenya

For the Government of
the Socialist Republic of Viet Nam



Annex I Route schedules

- A. The Designated Airline(s) of the Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Kenya	Any Points	Points in Viet Nam	Any Points

- B. The Designated Airline(s) of the Socialist Republic of Viet Nam shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Viet Nam	Any Points	Points in Kenya	Any Points

Note:

1. Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights, provided that any service either begins or terminates in the territory of the Contracting Party designating the airline.
2. The right of the designated airlines of either Contracting Party to transport passengers, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of Third Parties shall be discussed and agreed upon by the aeronautical authorities of the two Contracting Parties.

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**MINISTRY OF TRANSPORT AND INFRASTRUCTURE
OFFICE OF THE PRINCIPAL SECRETARY/TRANSPORT SERVICES**

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NGONG ROAD
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NAIROBI

When replying please quote

MOT&I/C/AT/028/116/VOL.I (74)

J-N
TMA
26/6

19th June, 2015

Mr. Justin Bundi
Clerk to the National Assembly
Parliament Building
NAIROBI

Dear *Justin*

**RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT
BETWEEN THE GOVERNMENT OF KENYA AND THE GOVERNMENT
OF THE SOCIALIST REPUBLIC OF VIETNAM**

The Cabinet during its Fifth Meeting 2015, held on 21st May, 2015 considered and approved the ratification of the Bilateral Air Services Agreement between Kenya and Vietnam initialled on 7th August, 2014.

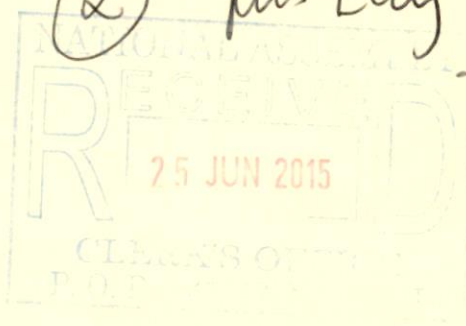
The Treaty Making and Ratification Act, 2012 Section 8 requires that the Agreement be considered and approved by Parliament for ratification.

The purpose of this letter therefore is to forward to you 30 copies of the Bilateral Air Services Agreement between Kenya and Vietnam and a Parliamentary Paper for your necessary action.

Yours *Sincerely*

(2) Mrs Lucy Wangohi

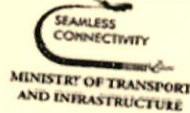
[Signature]
**Eng. John K. Mosonik, EBS
PRINCIPAL SECRETARY**

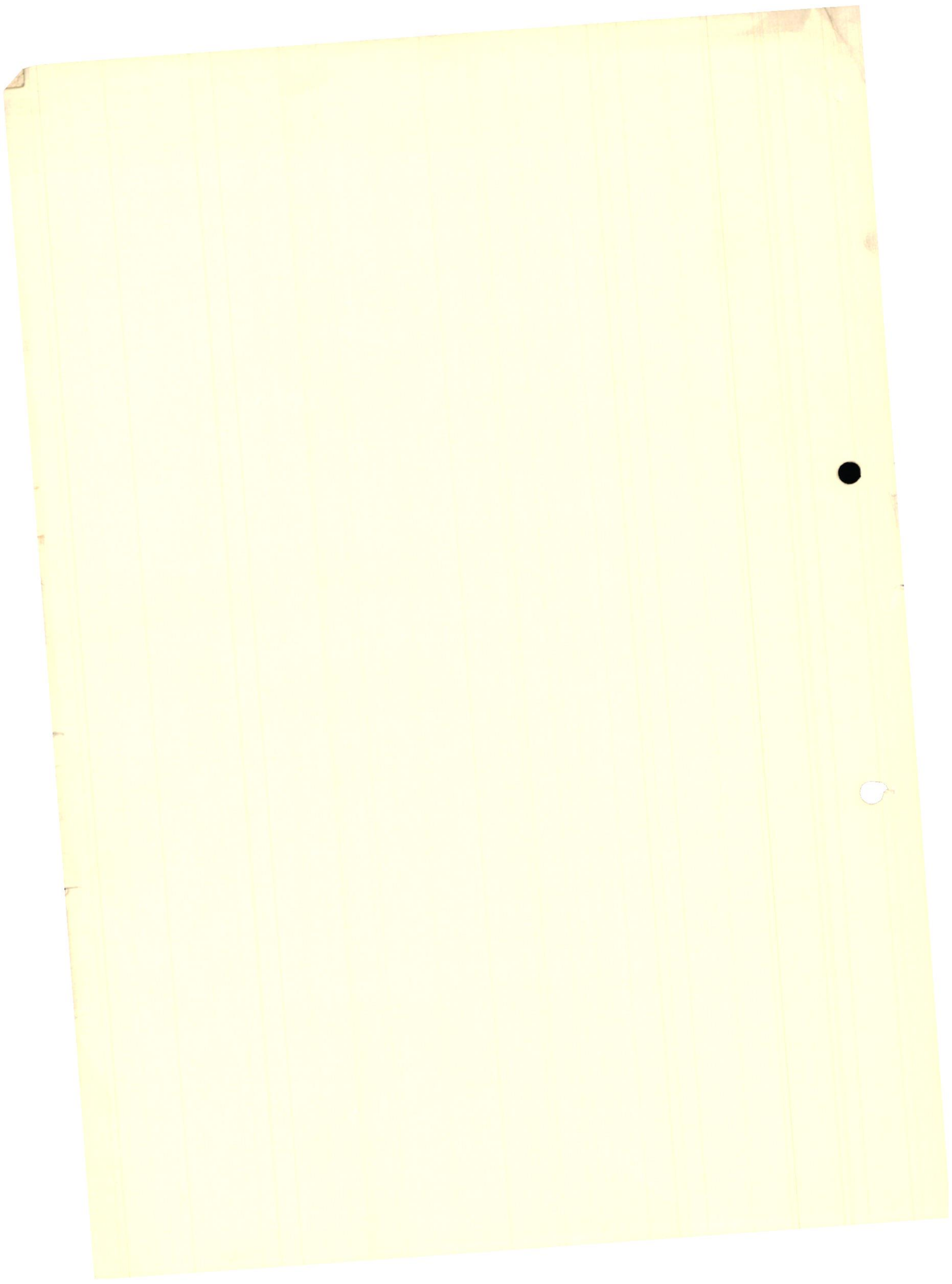


For Tabling

*JN
26/6*

Attach.







Paper Land
By the Leader of the
Majority Party, (FDP)
Seen Duale on
Tuesday, 30/6/2015
[Signature]

MEMORANDUM OF UNDERSTANDING (MOU) ON AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Delegations representing the Government of the Republic of Kenya (hereinafter referred to as The Kenya Delegation) and the Aeronautical Authority of the Socialist Republic of Viet Nam (hereinafter referred to as The Viet Nam Delegation) and hereinafter referred to collectively as "The Delegations" met in Ha Noi, Viet Nam on 6th and 7th August, 2014 for the purpose of negotiating a new Air Services Agreement and a Memorandum of Understanding.

The negotiations were held in a cordial and friendly atmosphere, characteristic of the good relations that exist between the Contracting Parties.

The list of both delegations is attached hereto as Appendix "A".

The following issues were discussed and agreed on as herein below:

1. BILATERAL AIR SERVICES AGREEMENT

Both delegations agreed to initial a new Air Services Agreement (the Agreement) attached as Appendix B.

Both delegations further agreed to recommend to their respective Governments the formal signing of the Agreement.

2. MEMORANDUM OF UNDERSTANDING

The following understanding was reached between the Delegations:

a) DESIGNATION

The Delegations agreed to adopt multi-designation of airlines from their respective countries.

b) FREQUENCY AND CAPACITY

The Delegations agreed that the capacity and frequencies to be applied on the agreed routes shall not be restricted.

c) ROUTE SCHEDULE

The Delegations agreed to adopt a liberal routes structure to be operated by the designated airlines as provided for in the Annex I to the Agreement.

d) TRAFFIC RIGHTS

Both delegations agreed that 3rd and 4th freedom traffic rights for passenger, combination and all-cargo services will continue to be freely exchanged in accordance with the provisions of the Agreement.

The delegations further agreed that, exercise of the fifth freedom traffic rights will be subject to agreement by the two aeronautical authorities.

e) CODE-SHARE ARRANGEMENTS

Both delegations agreed that designated airlines can code share with airlines of either Contracting Party. Further, designated airlines are free to code share with airlines of Third Party States as long as the third Party airlines have the underlying traffic rights on routes in question.

f) AVOIDANCE OF DOUBLE TAXATION

The Delegations agreed to urge their competent authorities to conclude an agreement for avoidance of double taxation on revenues, capital and profits arising from their respective airlines activities and income in the territory of the other Contracting Party.

g) CO-TERMINATION

The two delegations agreed that the designated airlines are free to combine points in the territory of either contracting party without cabotage.

3. ENTRY INTO FORCE OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall come into force upon signature.

Done at Ha Noi on 7th August 2014.

For the Government of The Republic
of Kenya



Mr. Benjamin Kiguhi Enyenze

For the Aeronautical Authority of
the Socialist Republic of Viet Nam



Mr. Vo Huy Cuong

LIST OF KENYAN DELEGATION

1. Chairman
Mr. Enyenze Benjamin Kiguhi
Senior Air Transport Officer
Ministry of Transport and Infrastructure
2. Members
Ms. Chesoni Joan Magonjo
State Counsel
State Law Office
3.
Mr. Owiti Peter Opiyo
Charge d'Affaire a.i
Kenya Embassy, Bangkok, Thailand
4.
Mr. Kimemia Joram Michael Kageto
Legal Counsel
Ministry of Foreign Affairs and International Trade
5.
Mr. Wanje Ezekiel Mwamure
Air Transport Officer
Kenya Civil Aviation Authority
6.
Mr. Kamau George Karuthui
Legal Officer
Kenya Airports Authority
7.
Mr. Mwangi Isaac Gitonga
Government and Industry Affairs
Kenya Airways

V. C. M. /

V. C. M. /

LIST OF VIETNAMESE DELEGATION

1. Chairman Mr. Vo Huy Cuong
Deputy Director General
Civil Aviation Authority of Viet Nam (CAAV)
2. Members Mr. Ngo Thanh Phuong
Deputy Director
Legal Affairs and International Cooperation Department, CAAV
3. Mr. Vu Hong Quang
Deputy Director
Air Transport Department, CAAV
4. Mrs. Le Thi Thu Ha
Official
Air Transport Department, CAAV
5. Mr. Nguyen Duc Lam
Official,
Legal Affairs and International Cooperation Department, CAAV
6. Mr. Nguyen Tien Hoang
Deputy General Manager
Vietnam Airlines

V. Cuong

V. Cuong

Appendix B

**Air Services Agreement
between
the Government of the Republic of Kenya
and
the Government of the Socialist Republic of Viet Nam**

V. C. 10/15

V. C. 10/15

Air Services Agreement

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 - Article 21 – Settlement of disputes
 - Article 22 – Amendments
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 - Article 24 – Termination
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- Annex I – Route schedules

V. L. Jones

V. L. Jones

Preamble

The Government of the Republic of Kenya and the Government of the Socialist Republic of Viet Nam (hereinafter, "the Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:



Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

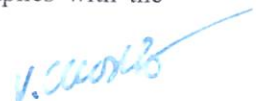
- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of Republic of Kenya the Minister/Cabinet Secretary in charge of aviation; in the case of the Government of the Socialist Republic of Viet Nam, the Civil Aviation Authority of Viet Nam, Ministry of Transport ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- g) "ICAO" means the International Civil Aviation Organization;
- h) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- i) "Contracting Party" is a State which has formally agreed to be bound by this agreement;
- j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- k) "territory" in relation to a State means the land areas, and in the case of the Socialist Republic of Viet Nam, it includes mainland and islands, and under sovereignty of a Contracting Party, internal waters and territorial seas, and the airspace above the said areas;
- l) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and
- m) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

Article 2 Grant of rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Contracting Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Contracting Party;
 - b) the right to make stops in the territory of the other Contracting Party for non-traffic purposes; and
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail separately or in combination.
3. The airlines of each Contracting Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Contracting Party.

Article 3 Designation and authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airline(s) to operate the agreed services in accordance with this Agreement.
2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Contracting Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:
 - a) substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
 - b) the Contracting Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
 - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.
3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.



Article 4

Withholding, revocation and limitation of authorization

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

- a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Contracting Party designating the airline, nationals of that Contracting Party;
- b) in the event of failure of the Contracting Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
- c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 Consultations, of this Agreement.

Article 5

Application of laws

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.

3. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Article 6

Direct transit

Passengers, baggage, and cargo in direct transit through the territory of any Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.



Article 7 Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Contracting Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

Article 8 Safety

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Contracting Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Contracting Party shall then take appropriate corrective action within an agreed time period. Failure by the other Contracting Party to take appropriate action within the said period or such longer period as may be agreed shall be grounds for the application of Article 4 of this Agreement to revoke or suspend operating authorisation
3. . Notwithstanding the obligation mentioned in Article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the airline of one Contracting Party on services to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its flight crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or series of ramp inspections gives rise to:
 - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
 - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention:
 the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licenses in respect of

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that aircraft or in respect of the flight crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of air aircraft operated by an airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

8. With reference to paragraph 2, if it is determined that one Contracting Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

Article 9

Aviation security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Contracting Parties adhere to.

2. The Contracting Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.

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4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Contracting Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Contracting Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Contracting Party may take interim action at any time.

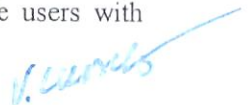
Article 10

User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Contracting Party shall encourage the competent charging authorities to provide users with



reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 21 Settlement of Disputes, to be in breach of a provision of this Article, unless:

- a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or
- b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Contracting Party shall be available for use by the airlines of the other Contracting Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

Article 11

Duties, Taxes and Fees

1. Each Contracting Party shall on the basis of reciprocity exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

- a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.



Article 12 **Fair competition**

1. Each Contracting Party agrees:
 - a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and
 - b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Contracting Party.
2. Each Contracting Party shall allow each designated airline(s) to determine the frequency and capacity of the international air service it offers, as well as the traffic demand for the air services, based on commercial considerations of the marketplace.
3. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons, consistent with Article 15 of the Convention.
4. Neither Contracting Party shall require the filing of programmes for non-scheduled flights, or operational plans by the designated airlines of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (2) of this Article. If a Contracting Party requires filing for information purposes, it shall minimise the administrative burdens of such filing requirements and procedures on air transport intermediaries and on designated airlines of the other Contracting Party.

Article 13 **Establishment of Tariffs**

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
 - a) Prevention of unreasonably discriminatory prices or practices;
 - b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
 - c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;

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d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority

a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and

b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.

5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

Article 14

Currency conversion and remittance of earnings

Each Contracting Party shall permit airline(s) of the other Contracting Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance, according to the foreign exchange regulations of the Contracting Party concerned.

Article 15

Sale and marketing of air service products

1. Each Contracting Party shall accord airlines of the other Contracting Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services, and any person shall have the right to purchase such transportation, in the currency of that territory, or in freely convertible currencies to the degree permitted by national laws and regulations, provided that they are applied on a non-discriminatory basis.



Article 16

Codesharing/Cooperative arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:

- a) an airline or airlines of either Contracting Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Contracting Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Contracting Parties at least 30 days before its proposed introduction.

Article 17

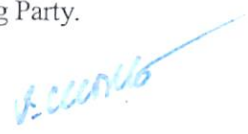
Environmental Protection

The Contracting Parties support the need to protect the environment by promoting the sustainable development of aviation. The Contracting Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

Article 18

Statistics

The aeronautical authorities of each Contracting Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Contracting Party.



Article 19

Approval of schedules

1. The designated airline of each Contracting Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Contracting Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Contracting Party.

Article 20

Consultations

In the spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Contracting Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.

Article 21

Settlement of disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.



6. Either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting Party in default hereof.

Article 22 Amendment

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an exchange of diplomatic notes.

Article 23 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Contracting Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

Article 24 Termination

Either Contracting Party may, at any time, give notice in writing, through diplomatic channels, to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, or any shorter period of time as may be agreed by both Contracting Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

Article 25 Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

Article 26 Entry into force

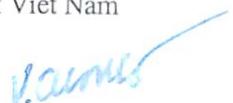
This Agreement shall be applied provisionally from the date of its signature and shall enter into force on the day the last written notification is received by diplomatic note confirming that the Contracting Parties have fulfilled all respective internal procedures required for the entry into force of this Agreement.

In the witness whereof the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at..., this ... Day of ... in the year ... in duplicate original copies in English and Vietnamese languages, both texts being equally authentic.

For the Government of the
Republic of Kenya

For the Government of
the Socialist Republic of Viet Nam



Annex I Route schedules

- A. The Designated Airline(s) of the Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Kenya	Any Points	Points in Viet Nam	Any Points

- B. The Designated Airline(s) of the Socialist Republic of Viet Nam shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Viet Nam	Any Points	Points in Kenya	Any Points

Note:

1. Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights, provided that any service either begins or terminates in the territory of the Contracting Party designating the airline.
2. The right of the designated airlines of either Contracting Party to transport passengers, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of Third Parties shall be discussed and agreed upon by the aeronautical authorities of the two Contracting Parties.

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PARLIAMENTARY PAPER ON THE RATIFICATION OF BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

1.0 Background Information

The Ministry of Transport and Infrastructure takes the lead in negotiating and reviewing Bilateral Air Services Agreements between Kenya and various States to facilitate Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network, in addition to allowing foreign carriers access into the Kenyan market. These Agreements are negotiated by a team comprising of representatives from the Ministry of Transport and Infrastructure, Ministry of Foreign Affairs and International Trade, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Agreements are negotiated in line with the Integrated National Transport Policy, which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for States within Africa and on the basis of equal opportunity and reciprocity for other States.

The Agreements facilitate airlines to expand their existing route networks by directly operating scheduled air services to other markets. In addition, where airlines are unable to offer services the Agreements provide for them to enter into Commercial Arrangements especially code share, which allow airlines to grow the demand in other markets by putting their code on other carriers. For example, Kenya Airways has a code share agreement with KLM which allows it to put its code KQ on KLM operated flights into Europe and other destinations thereby offering passengers seamless connectivity to the traveling public.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is normal practice for the delegations representing the concerned States to sign a Memorandum of Understanding

(MoU) that gives force to the Agreement as it awaits the signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require for the signing of the Agreement prior to entry into force.

2.0 Analysis of the Issue

The Bilateral Air Services Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014. In order to operationalize the Agreement, delegations from the two states signed a Memorandum of Understanding (MoU) that gave force to the Agreement while awaiting signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation.

The Agreement is modeled on the ICAO template and based on equal opportunities and reciprocity. The Agreement is liberal and aimed at enabling designated airlines of either State to operate scheduled air services between their territories without any restrictions. It provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of 5th Freedom Traffic Rights, is subjected to agreement by the two aeronautical authorities.

2.1 Kenya/Viet Nam Blateral Air Services Agreement

The Agreement between the Republic of Kenya and the Socialist Republic of Viet Nam was negotiated and initialed on 7th August, 2014 in Ha Noi, Viet Nam (copy attached). Delegations representing the two States signed an MoU on the same day operationalizing the provisions of the negotiated and initialed Agreement.

Kenya Airways plans to commence daily scheduled flights to Ha Noi, Viet Nam effective from 30th March, 2015 and is keen on increasing the number of frequencies and entry points into Viet Nam in the near future. Additionally, the airline plans to extend its flights to points into China from Viet Nam. Currently, there is no Viet Nameese airline operating scheduled flights into Kenya. We believe that the signing of the Agreement will give impetus to Kenya Airways to increase additional frequencies and enable Viet Nameese airlines to start operating on the sector for fair competition.

3.0 Way forward

The National Assembly grants approval for the ratification of the Air Services Agreement between Kenya and Viet Nam to enable submission of the Agreements to Parliament and finalization of the ratification process. This will enable the signing of the Air Services Agreement between Kenya and Viet Nam.

KENYA/VIETNAM BILATERAL AIR SERVICES AGREEMENT (BASA)

Article	Title	Comments
Article 1	Definitions	The Article defines the technical terminologies used in the Bilateral Air Services Agreement (BASA) text.
Article 2	Grant of Rights	The Article grants the first, second, third and fourth freedoms of the air on a reciprocal basis to each of the Contracting Parties.
Article 3	Designation and Authorization	The Article provides for multiple designation of airlines of both the Contracting Parties. Designation is liberal.
Article 4	Withholding, revocation and limitation of authorization	The Article provides for the right to withhold the authority to operate or revoke the certificate(s) if an airline does not meet the minimum set standards.
Article 5	Application of Laws	The Article reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the Parties' territory. The laws and regulations apply to the designated airlines of the other Party, passengers, crew, mail and cargo.
Article 6	Direct Transit	The Article reaffirms that passengers, baggage and cargo on transit shall not be screened if they don't leave their designated area at airport. However, screening can be done for aviation security, narcotics control, prevention of illegal entry or in special circumstances.
Article 7	Recognition of Certificates	Parties reaffirm to recognize Certificates of airworthiness, certificates of competency and licenses issued by the other Contracting Party and are still valid. The certificates must be equal or above the ICAO set standards.
Article 8	Aviation Safety	The Article provides for the procedure to be followed when safety standards being maintained by the other Party relating to aviation facilities, aircrew, aircraft and the operation of aircraft are inadequate. The Article is based on ICAO Annex 19.
Article 9	Aviation Security	The Article reaffirms the Parties obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The Article is based on ICAO Annex 17.

Article 10	User Charges	The Article provides for user charges imposed by the competent charging authorities of each Party on airlines of the other Party to be just, reasonable, non-discriminatory, equitably apportioned among categories of users and based on sound economic principles.
Article 11	Duties, Taxes and Fees	The Article grants on reciprocal basis exemption from custom duties to the other Party for regular equipment, supplies of fuel and lubricants as well as aircraft stores on board aircraft and being used on flight. Inspection fees and other similar charges are also exempted.
Article 12	Fair Competition	The parties reaffirm to ensures fair and equal opportunity for the designated airlines to compete in providing international air transportation governed by the Agreement.
Article 13	Establishment of Tariffs	The Article provides for designated airlines to establish tariffs based on commercial considerations in the market place such as cost of operation, characteristics of the service, interests of the users, reasonable profit and other market considerations.
Article 14	Currency Conversion and remittance of Earnings	The Article provides for transfer of airlines revenues earned from the air transportation services in convertible currency from the territory of the other Party to their home country.
Article 15	Sale and marketing of air service product	The Article provides for the right to sell and market international air services and related products in its territory directly or through agents, and right to establish offices.
Article 16	Codesharing/Cooperative arrangements	The Article provides for designated airlines to enter into co-operative marketing arrangements such as blocked space and code-share. The airlines may be from one Party or the other Party or third country airlines.
Article 17	Environmental Protection	The Parties reaffirm to comply with ICAO standards and Recommended practices of Annex 16 and existing ICAO policy and guidelines on environmental protection with regard to aviation activities. (noise and carbon monoxide)
Article 18	Statistics	Parties reaffirm to supply at the request of the aeronautical authorities of the other Party, statements or statistics of passengers, cargo and

		mail for purpose of reviewing operations of designated airlines.
Article 19	Approval of schedules	The Article provides for submission of flight schedules of designated airlines to the aeronautical authorities of other Contracting Party for their approval at least 30 days prior to the operation of agreed services.
Article 20	Consultations	The Article reaffirms close co-operation between the Parties to ensure effective implementation of the Air Services Agreement. A Party may request for high level meeting up to Ministerial level or escalate the consultations higher if deemed necessary.
Article 21	Settlement of Disputes	The Article provides for the procedure to be followed in dispute resolution. The process includes negotiation between the Parties, referring the issue to a person or body and arbitral tribunal. Parties reaffirm to be bound by any provisional measures indicated by such a tribunal/person or body pending its final decision.
Article 22	Amendment	The Article provides for the procedure of making amendments to the Agreement. Amendments agreed by the Contracting Parties come into effect when confirmed by an exchange of diplomatic Notes.
Article 23	Multilateral Agreements	The Parties reaffirm that the Agreement shall be deemed to have been amended by provisions of any multilateral air transport agreement, which may become binding on both Parties.
Article 24	Termination	The Article provides for termination of the Agreement by either Party and explains the procedure for termination and the period the termination takes to be effective.
Article 25	Registration with ICAO	In the Article the Parties reaffirm for registration of the Agreement and its amendments with the International Civil Aviation Organization (ICAO) upon signature. ICAO is the repository.
Article 26	Entry Into Force	The Article stipulates the process of implementation of the Agreement upon signature by the Parties and its entry into force.



Appendix B



BILATERAL AIR SERVICES AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND

THE REPUBLIC OF NIGER

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AIR SERVICES AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF NIGER

PREAMBLE

The Republic of and the Republic of Niger Kenya (jointly referred to as the Contracting Parties and in the singular as a Contracting Party);

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;

Noting the Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the liberalization of Access to Air Transportation Market in Africa on 14 November 1999 as endorsed by the summit of the Organization of African Unity (OAU) Heads of State in July 2000;

Acknowledging the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

Desiring to contribute to the progress of international air transport opportunities;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to conclude an Agreement, for the purpose of establishing and operating air services between and beyond their respective territories;

Desiring to make it possible for Airlines to offer the traveling and shipping public a variety of service options at prices that are not discriminatory and do not represent abuse of a dominant position and wishing to encourage individual Airlines to develop and implement innovative and competitive prices.

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation and

HEREBY AGREE as follows:-

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ARTICLE 1 DEFINITIONS

For the purpose of this Agreement and any annex attached hereto, unless the context otherwise requires the terms and the expressions below have the followings meanings:

- a) **“Abuja Treaty”**: the Treaty establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12th May 1994;
- b) **“Aeronautical Authorities”**: in the case of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation and in the case of the Republic of Niger, the Minister in charge of Civil Aviation; in either case, any person or body authorized under its laws to perform a particular function to which this Agreement relates;
- c) **“Agreed services”**: the scheduled international air services which may be operated by virtue of this Agreement;
- d) **“Agreement”**: this agreement , the Annex thereto and any amendments to the Agreement or to the Annex;
- e) **“aircraft equipment” “aircraft stores” and “spare parts”**: as respectively assigned to them in Annex 9 of the Convention;
- f) **“air service”, “international air service”, “Airline(s)” and “stop for non-traffic purposes”**: as respectively assigned to them in Article 96 of the Convention;
- g) **“Annex”**: the route schedule annexed to this Agreement and any clauses or notes appearing in such Annex and any modification made thereto in accordance with the provisions of Articles 16 and 18 of this Agreement;
- h) **“Code-sharing”**: a commercial arrangement whereby passengers of two or more Airline(s) travel together on one aircraft bearing the Airline(s) flight code of two or more Airline(s);
- i) **“ Countries bound by the Yamoussoukro Decision”** :
 - l) The African States signatories to the Abuja Treaty and who have not filed formal notification to withdraw from the “Yamoussoukro Decision”; and



- II) Any other Country which though not Party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.
- j) **“Convention”**: the Convention on International Civil Aviation, opened for signature at Chicago on 7th December 1944 and includes; (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or annex is at any the given time effective for both Contracting parties;
- k) **“Designated Airline(s)”**: the Airline(s) which has/have been designated and authorized in accordance with Article 3 of this Agreement;
- l) **“Decision”**: the Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access of Air Transport of 14th November 1999 as endorsed by the OAU Heads of State on 11th July 2000 including the Appendices and Amendments;
- m) **“Full cost”**: the cost of providing service plus a reasonable charge for administrative overhead;
- n) **“Scheduled services”**: those services operated regularly by a designated Airline(s) according to schedules published in advance to cover a time table period;
- o) **“Specified routes”**: the air routes as set forth in the Annex thereto on which the agreed service may be operated;
- p) **“Tariff”** : the fare or rate to be paid for the carriage of passengers and their baggage and cargo (other than mail) and the conditions governing the availability or applicability of that fare or rate, including the charges and conditions for services ancillary to the carriage;
- q) **“Territory”**: the meaning assigned to it in article 2 of the Convention;
- r) **“Traffic”**: the carriage of passengers, cargo and mail;
- s) **“User charges”**: fees or rates levied for the use of airports, navigational facilities and other related services offered by one contracting Party to the other.

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ARTICLE 2 RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINE (S)

1. Each Contracting Party grants to the other Contracting Party, the rights specified in this Agreement for the purpose of establishing the agreed services on the specified routes in the annexes to this Agreement. The Airline (s) designated by each Contracting Party shall enjoy, while operating the agreed services on the specified route, the following rights:
 - a) To fly without landing across the territory of the other Contracting Party;
 - b) To make stops in the said territory for non-traffic purposes;
 - c) To make stops in the said territory at the points specified for that route in the schedules to this Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of the other Contracting Party.
2. Each Party shall enjoy in addition to the rights specified in paragraph 1 of this Article, 5th freedom traffic rights in respect of other African States in accordance with the Yamoussoukro Decision.
3. Nothing in sub-Articles (1) and (2) shall confer on a designated airline of a Contracting Party the right of taking on board in the territory of the other Contracting Party, passengers, baggage, cargo and mail, carried for remuneration or hire and destined for another point in the territory of the other Contracting Party.
4. If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of a Contracting Party is unable to operate a service on its normal routes, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually decided by the Contracting Parties

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ARTICLE 3
DESIGNATION AND AUTHORIZATION OF AIRLINES

1. Each Contracting party shall have the right to designate in writing to the other Contracting Party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels and shall identify whether the Airline or airlines are authorized to conduct the type of air transportation specified in the Annex.
2. On receipt of such designation, the other Contracting party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay but not later than 30 days, grant to the Airline(s) designated the appropriate operating authorization.
3. The Aeronautical Authority of a Contracting Party may require the Airlines designated by the other Contracting party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
4. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph (2) of this Article or to impose such conditions as it may deem necessary on the exercise by a designated Airline(s) of the rights specified in Article 2 of this Agreement.
5. The party designating the Airline(s) shall maintain and administer the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security) of this Agreement.
6. When an Airline has been so designated and authorized, it may begin at any time to operate the agreed services provided that a tariff established in accordance with the provisions of Article 9 of this Agreement is in force in respect of that service.

ARTICLE 4
REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline(s) of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights;

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- a) Where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals.
 - b) Where the airline fails to comply with the laws and the regulations in force in the territory of the Contracting Party granting these rights; or
 - c) Where the Airline(s) otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
 - d) The Other party is not maintaining and administering the standards as set forth in Article 6 (Safety) of this Agreement.
2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of the laws or the regulations of the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

ARTICLE 5 APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

1. The laws and regulations of one Contracting party relating to admission to, flight within or departure from its territory of aircraft of its designated Airline(s) engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the Designated Airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.
2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.t
3. Traffic in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures, narcotics control or in special circumstances, be subject to no more than a simplified control.

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4. Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article.
5. Each Contracting Party shall, upon request of the other Contracting Party supply the copies of the relevant laws regulations, regulations and procedures referred to in this Agreement.

ARTICLE 6 SAFETY

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the minimum standards that may be established pursuant to the Convention.
2. Each Party reserves the right, however, to refuse to recognize, for the purpose of flights undertaken pursuant to rights granted under Article 2 (Rights and Privileges of Designated Airline(s)), certificates of competency and licenses granted to its own nationals by the other Contracting Party.
3. Either Party may request consultation concerning the Safety Standards maintained by the other Party relating to aeronautical facilities, air crews, aircraft and operation of the Designated Airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards that may be established pursuant to the Convention, the other party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other party shall take appropriate corrective action.
4. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an Airline or Airlines designated by the other party in the event the other Party does not take such appropriate corrective action immediately.

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ARTICLE 7 AVIATION SECURITY

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on offenses and Certain Other Acts Committed on board Aircraft; signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16th December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24th February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1st March 1991 insofar as both Contracting Parties are party to these conventions and any other Convention on Aviation Security to which the Contracting Parties shall become party.
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation. The parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
3. Each Contracting Party agrees that such operations of aircraft may be required to observe the aviation security provisions referred to in paragraph (2) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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4. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports of air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof with the minimum risk of life.

ARTICLE 8 FAIR COMPETITION

1. Each Party shall allow a fair and equal opportunity for the Designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airline(s) of the other party.
3. Neither Party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the Designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.
5. Any restrictions on the operations of the Designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention.

ARTICLE 9 PRICING

1. Each Party shall allow prices for air transportation to be established by each Designated Airline based upon commercial considerations in the market place. Intervention by the Parties shall be limited to;-

- a) Prevention of unreasonably discriminatory prices or practices;



- b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) Protection of Airlines from prices that is artificially low.
2. Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by Airlines of the other Party. Notification or filing by the Airline(s) of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notifications for filing may be permitted on shorter notice than normally required. If a Party permits an Airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.
3. If a Party believes that a price proposed to be charged by an Airline of the other Party for international air transportation between the territories of parties is inconsistent with considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible.
4. Except as otherwise provided in this Article, neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by an Airline of either Party for international Air transportation between the territories on interline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach Agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall use its best efforts to put that Agreement into effect. Without such mutual Agreement, the previously existing price shall continue in effect.

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ARTICLE 10
EXEMPTION FROM CUSTOMS DUTIES, TAXES, INSPECTION FEES AND
OTHER SIMILAR CHARGES

1. Aircraft operated on international air services by the Designated Airline of either Contracting Party, as well as their regular equipment supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided that such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.
2. There shall also be exempt from the same duties, taxes, fees and charges with the exception of charges corresponding to the service performed :
 - a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs Authorities of the said territory and for use on board outbound aircraft of the other contracting Party engaged on international air services.
 - b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the Designated Airlines of the other Contracting Party;
 - c) Fuel and lubricants supplied in the territory on a Contracting Party to an outbound aircraft of the Designated Airlines of the other Contracting Party, engaged on an international air service even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they will have been taken on board.
 - d) Materials referred to in sub-paragraphs a, b, and c above may be required to be kept under Customs supervision or control.
 - e) The regular airborne equipment as well as the material and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of Customs Authorities of that territory. In such cases, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.



ARTICLE 11 USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of each party on the Airlines of the other Party shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based upon sound economic principles as set forth in paragraph 2 of this Article. In any event, any such user charges shall be assessed on the Airlines of the other Party on terms not less favorable than the most favorable terms available to any other Airline at the time the charges are assessed.
2. User charges imposed on the Airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their view, and have their views taken into account, before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Articles 15 and 16, to be in breach of a provision of this Article, unless (i) it fails to undertake review of the charge of practice that is the subject of complaint by the other Party within a reasonable amount of time; or (ii) following such a review it fails to take any steps within its power to remedy the charge or practice that is inconsistent with this Article.

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ARTICLE 12 COMMERCIAL OPPORTUNITIES

1. The Airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation.
2. The Designated Airline(s) of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialized staff required for the provision of air transport.
3. Each Designated Airline shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground handling services shall be available on equal basis to all Airlines; charges shall be based on costs of services provided.
4. Any Airline of each Party may engage in the sale of air transportation in the territory of the other Party directly and, at the Airline's discretion through its agents. Each Airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each Designated Airline shall have the right to remit to its country receipts in excess of sums locally disbursed in due proportion to the carriage of passengers, baggage, cargo and mail. Such transfers shall be affected on the basis of the foreign exchange regulations in force. If payments between the Contracting Parties are regulated by a special Agreement, this special Agreement shall apply.
6. Both parties agree that in operating the Agreed Services on the Routes Schedule, the Designated Airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;
 - a) The Airlines of the other Party; and/or
 - b) An Airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Contracting Party.



ARTICLE 13 SUBMISSION OF TIME TABLE

1. The designated Airline(s) of each Contracting Party shall, not later than thirty (30) days prior to the date of operation of the agreed services on the specified routes, submit the envisaged time-table for approval to the aeronautical authority of the other Contracting Party. The same procedure shall apply to any modification thereof.
2. Such timetables shall include all relevant information necessary for the operation, including the type of service, aircraft to be used and the flight schedule.
3. For supplementary flights which the Designated Airline(s) of the one Contracting Party wishes to operate on the agreed services on the specified routes outside the approved time-table it has to request prior permission from the aeronautical authority of the other Contracting Party. Such request shall usually be submitted at least two working days before such flights.
4. Subject to the sub paragraphs (1) and (3) of this article, no schedule will come into force if it is not approved by the Aeronautical Authorities of the Contracting Party concerned.
5. The schedule approved for the season according to the terms of this article, will remain in force for the corresponding season until further approval.

ARTICLE 14 SUBMISSION OF STATISTICS

The Aeronautical Authorities of one Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics required for the purpose of reviewing the operations of the Designated Airline of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

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ARTICLE 15 SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiations, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.
5. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

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6. If one of the Contracting Parties does not conform to the arbitral Decision, the other Contracting Party could, as long as this omission lasts, limit, suspend or revoke the rights and privileges which it would have granted on the ground of this Agreement to the Contracting Party in default.

ARTICLE 16 CONSULTATIONS

1. Exchange of views shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement.
2. Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

ARTICLE 17 REGISTRATION OF AGREEMENT

This Agreement, its Annex, as well as any amendments thereto shall be registered with the International Civil Aviation Organization and African Civil Aviation Commission.

ARTICLE 18 AMENDMENTS

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.
2. In the event of the conclusion of any general multilateral Convention concerning air transport by which both Contracting Parties become bound, this Agreement and its Annexes shall be amended so as to conform to the provisions of such Convention.



**ARTICLE 19
TERMINATION**

Either Contracting Party may at any time give notice through diplomatic channel to the other Contracting Party of its intention to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such cases, this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by Agreement before the expiry of this period.

In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

**ARTICLE 20
POWER OF SUPERCESSION**

This Agreement supersedes the Air Transport Agreement initialed on October 25 1995 at Nairobi (Kenya)

**ARTICLE 21
ENTRY INTO FORCE**

This agreement shall enter into force upon exchange of notes through the diplomatic channel confirming completion of all necessary internal procedures by each Contracting party.

IN WITNESS WHEREOF the undersigned being authorized thereto by their respective Governments have signed this Agreement.

DONE at this day ofin duplicate, in English and French languages, all texts being equally authentic.

**FOR THE GOVERNMENT
OF THE REPUBLIC OF KENYA**

**FOR THE GOVERNMENT
OF THE REPUBLIC OF NIGER**

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ANNEX 1

SCHEDULED AIR TRANSPORT

SECTION 1

ROUTES AND TRAFFIC RIGHTS

Airline(s) of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled International Air Transport between points on the following routes:

ROUTE SCHEDULE AND TRAFFIC RIGHTS.

ROUTE SCHEDULE

FOR THE DESIGNATED AIRLINE (S) OF THE REPUBLIC OF NIGER.

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF KENYA	POINTS BEYOND THE REPUBLIC OF KENYA
Any Points in the Republic of Niger	Any points	NAIROBI	Any points

FOR THE DESIGNATED AIRLINE(S) OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF NIGER	POINTS BEYOND THE REPUBLIC OF NIGER
Any Points in the Republic of Kenya	Any points	NIAMEY	Any points

NOTES ON THE ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES

Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights that either begin or terminate in the territory of the country designating the airline.



TRAFFIC RIGHTS

SECTION 2

OPERATIONAL FLEXIBILITY

Each designated Airline(s) may, on any or all flights and at its options;

1. Operate flights in either or both directions
2. Combine different flight numbers within one aircraft operation;
3. Serve intermediate, and beyond points and points in the territories of the parties on the routes in any combination and in any order.
4. Omit stops at any point or points
5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes
6. Serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services. Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services the service serves a point in the territory of the Party designating the Airline(s).

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BILATERAL AIR SERVICES AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC
OF KENYA**

AND

**THE GOVERNMENT OF THE REPUBLIC
OF GHANA**

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**BILATERAL AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT
OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE
REPUBLIC OF GHANA**

PREAMBLE

The Government of Republic of Kenya and the Government of the Republic of Ghana (hereinafter referred to as the Parties);

Recognizing the necessity to adopt measures with the aim of establishing a liberalized intra-African aviation market concerning, among others, traffic rights, capacity, frequency and pricing;

Desiring to cooperate and facilitate the expansion of international air transport opportunities within and beyond their respective territories;

Desiring to make it possible for their Airlines to cooperate and offer the travelling public a variety of service options;

Desiring to ensure the highest degree of safety and security in international air transport; and

Being Parties to:

The Convention on International Civil Aviation opened for signature at Chicago on 7th December 1944; and

The Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Market in Africa of 14th



November, 1999 as endorsed by the OAU Heads of State and Government on 11th July 2000;

HEREBY AGREE AS FOLLOWS:

**ARTICLE I
DEFINITION**

For the purpose of this Agreement unless the context otherwise requires:

- (a) The term " Abuja Treaty" means the Treaty establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd of June 1991 and which entered into force on 12th May 1994;
- (b) the term "Aeronautical Authority" means, in the case of the Republic of Kenya the Cabinet Secretary for the time being in charge of Civil Aviation; and in the case of the Republic of Ghana any governmental authority, body corporate or organ duly authorized to perform any function to which this Agreement relates;
- (c) the terms "aircraft equipment", "aircraft stores" and "spare parts" have the meanings respectively assigned to them in Annex 9 of the Convention;



- (d) the terms "air services", "international air services", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (e) the term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annexes adopted under Articles 90 of that Convention made pursuant to Articles 50 and 94 thereof so far as those Annexes and Amendments have been adopted by both Parties;
- (f) the term "Decision" means the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport in Africa of 14th November, 1999 as endorsed by the OAU Heads of State on 11th July 2000 including the Appendices and Amendments;
- (g) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- (h) the term "Eligible Airline" means any African air transport company fulfilling the requirements set forth in article 6.9 of the Decision;
- (i) the term " State Party" means each African State signatory to the Abuja Treaty and such other African country which, though not a



party to the said Treaty , has declared in writing its intention to be bound by this Decision;

- (j) the term "tariff" means the price to be paid for the carriage of passengers, baggage, mail and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and
- (k) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that State;
- (l) the term "user charges" means fees or rates levied for the use of airports, navigational facilities and other related services offered by one Party to the other.

ARTICLE II GRANT OF RIGHTS

1. Each Party shall grant to the other the free exercise of the rights of the first, second, third, fourth and fifth freedoms of the air on scheduled and non-scheduled passenger, cargo and / or mail flights performed by an Eligible Airline to/from their respective territories.
2. Notwithstanding the provision of paragraph 1 above operations of non-scheduled services shall be subject to approval by the appropriate authorities.



3. Each Party agrees to the following while exercising the rights mentioned in paragraphs 1 and 2 above. The designated airline may:
 - (a) operate flights in either or both directions;
 - (b) be permitted by the Parties to combine air services and use the same flight number;
 - (c) serve intermediate and beyond points within Africa and
 - (d) serve any one point in the territory of the other Party, omit stops at any point or points, provided that the services commenced at a point in the territory of the Party designating the Airline.
4. Without prejudice to the safety, security and environmental requirements whether national or international, no restrictions shall be imposed on the frequency, capacity and or aircraft type used on such services.
5. This Agreement shall not impose any obligation on a Party to grant cabotage rights to the other Party.

ARTICLE III

DESIGNATION AND AUTHORISATION

1. Each Party shall have the right to designate in writing to the other Party, one or more Airlines for the purpose of operating on the specified routes in accordance with this Agreement.



2. A Party may also designate an Eligible Airline from a State Party to operate air services on its behalf.
3. A Party may designate an eligible African multinational Airline in which a Party is a stakeholder to operate air services on its behalf.
4. On receipt of the notice of such designation, the other Party shall, subject to the provisions of paragraphs 1, 2 and 3 of this Article, grant to the Airline designated without delay but not later than 30 days, the appropriate authorization.
5. The Aeronautical Authority of one Party may require any Airlines designated by the other Party to satisfy it that they are qualified to fulfil the conditions prescribed under the laws and regulations which are applicable to the operation of international air services by such authorities in conformity with the provision of the Convention.
6. Each Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated Airline of the rights specified in Article II of the present Agreement, in any case where the said Party is not satisfied that the designated airline conforms with the eligibility criteria as defined in Article 6.9 of the Decision.



7. When an Airline has been designated and authorized, it may begin at any time to operate the agreed services. The proposed schedule of flights should be submitted to the appropriate authorities for approval at least 30 days before the intended date of its introduction on a seasonal basis.
8. Authorizations for the performance of non-scheduled air transport services by eligible Airlines of a Party shall be granted by the respective competent authorities, provided that an application has been submitted for approval to the appropriate authority, accompanied by the corresponding insurance policies.
9. In order to ensure continued scheduled air services on a particular route where scheduled Airlines have an obligation to operate during low and high traffic seasons, the scheduled Airlines will be given, preference over the non-scheduled Airlines on the same sector.

ARTICLE IV

VALIDITY OF CERTIFICATES

1. Certificates of airworthiness, certificates of competency and licenses issued or validated by the Parties, which have not expired, shall be recognized as valid by the other Party (provided that the requirement for such certificates or licences are at least equal to the minimum standards that may be established pursuant to the Convention).



2. Each Party reserves the right to refuse to recognize as valid for the purpose of operating the said specified routes over its own territory, certificates of competency and licences issued to its own nationals by the other Party.

ARTICLE V
EXEMPTION FROM CUSTOMS DUTIES

1. Aircraft operated on international services by the designated Airlines of the Parties, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all customs duties, inspection fees and other similar charges on arriving in the territory of a Party, provided such equipment, supplies and aircraft stores remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over the territory.
2. There shall also be exemption from the same duties, fees and charges with the exception of charges corresponding to the services performed for:
 - (a) aircraft stores taken on board in the territory of a Party, within limits fixed by the authorities of the said Party, and for use on board outbound aircraft engaged in an international service by the designated airline of the other Party;



- (b) spare parts and regular equipment imported into the territory of the other Party for the maintenance or repair of aircraft used on international services by the designated Airlines of the other Party; fuel and lubricants for the supply of outbound aircraft operated on international services even when these supplies are to be used on the part of the journey performed over the territory of the other Party in which they are taken on board.
3. Materials referred to in sub-paragraph (a) and (b) above may be required to be kept under customs supervision or control.
4. The regular airborne equipment as well as the materials and supplies retained on board the aircraft operated by the designated Airline of the Parties may be unloaded in the territory of a Party only with the approval of the customs authorities of the Party. In such cases, they may be placed under the supervision of the said customs authorities up to such time that they are re-exported or otherwise disposed off in accordance with customs regulations.

ARTICLE VI

COMPLIANCE WITH LAWS AND REGULATIONS

1. The laws and regulations of each Party governing the entry into, remaining in and departure from its territory, shall also be applicable to the aircraft of the designated Airline of the other Party.



2. The laws and regulations of each Party governing entry into, remaining in and departure from its territory of passengers, crew, mail and cargo transported on board the aircraft and in particular, those regarding passports, customs and sanitary control shall be applied to passengers, crew, mail and cargo taken on board of the designated Airlines of the other Party.

ARTICLE VII

AVIATION SAFETY

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to above which are at least equal to the minimum standards established at that time pursuant to the Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform to those minimum standards, within a specified period. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline designated by the other party which does not take such appropriate corrective action.



3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated Airline of the Party on services to or from the territory of the other Party, may, while within the territory of the other Party, be subject to an examination by the authorized representative of the Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred to as "ramp inspection") provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections give(s) rise to serious concerns that:
 - (a) An aircraft or the operation of the aircraft does not comply with the minimum standards established at the time pursuant to the Convention; or
 - (b) There is a lack of effective maintenance and administration of safety standards established at the time pursuant to the Convention.

The Party carrying out the ramp inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal



to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the designated Airline of one Party in accordance with paragraph 3 above is denied by the representatives of that designated Airline, the other Party may infer that serious concerns of the type referred to in paragraph 4 above arise and draw conclusions referred to in that paragraph.
6. Each Party reserves the right to immediately suspend or vary the operating authorization of a designated Airline of the other Party in the event the first Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.
7. Any action by one Party in accordance with paragraphs (2) and (6) above shall be discontinued upon compliance by the other Party with the safety provisions of this Article.

ARTICLE VIII

AVIATION SECURITY

Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of international civil aviation against acts of unlawful interference form an integral part of this



Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular, act in conformity with the provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14th September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 November 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23rd September 1971 including its protocol done at Montreal on February 24, 1988 and any other convention on aviation security to which both Parties shall become members .

- (a) The Parties shall provide upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- (b) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties, they shall require that operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
- (c) The Parties agree that such operators of aircraft shall be required to observe the aviation security provisions referred to in paragraph (b)



above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. The Party shall also give consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

- (d) When an incident or threat of an unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, passengers, crew, airports or any navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely, such incident or threat thereof.
- (e) When the Party has reasonable ground to believe that there is a departure from the provision of this Article, the Party may request immediate consultations with the other Party. Failure to reach a satisfactory agreement within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorizations and technical permissions of an Airline or Airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 30 days.



ARTICLE IX REPRESENTATION

1. The designated Airline of either Party shall be allowed to establish in the territory of the other Party, offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation.
2. Each designated Airline shall have a right to select among competing agents for ground handling services in the territory of the other Party. Ground handling services shall be available on an equal basis to all Airlines.
3. The Airlines shall also be allowed to bring in and maintain in the territory of either Party in accordance with the laws and regulations relating to entry, residence and employment, managerial, sales, technical operational and other specialist staff required for the provision of air transportation.

ARTICLE X COMPETITION RULES

Each Party shall ensure fair opportunity on non-discriminatory basis for the designated Airlines to effectively compete, in providing air transport services within their respective territories.



ARTICLE XI COOPERATIVE ARRANGEMENTS

Both Parties agree that in operating the Agreed Services on the Routes Schedule, the designated airline(s) may enter into co-operative marketing arrangements such as blocked space, code-sharing with;

- a) Airlines of the same Party;
- b) The Airlines of the other Party; and/or
- c) An Airline or Airlines of a third country provided that all Airlines in such arrangements hold appropriate authorizations for such arrangements from the other Party.

ARTICLE XII TARRIFS

1. The tariffs applicable between the territories of the two Parties shall be established at reasonable levels, due regard being paid to all relevant factors, including the cost of operation, the interests of users, reasonable profit, class of service and, when it is deemed appropriate, the tariffs of other airlines operating over the routes specified in the Annex.
2. Each Party shall allow tariffs for air transport to be established by each designated airline based upon commercial consideration in the marketplace. Intervention by the Parties shall be limited to:
 - (a) Prevention of unreasonably discriminatory prices or practices;



- (b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position or to concerted practice among air carriers; and
 - (c) Protection of airlines from prices that are artificially low due to direct or indirect government subsidy or support or any other reason.
3. Each Party may require notification to or filing with its Aeronautical Authorities of prices to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required not more than thirty (30) days before the proposed date of implementation. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification nor filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.
4. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged by:
- (a) An airline of either Party for international air transport between the territories of the Parties.
 - (c) An airline of one Party for international air transport between the territory of the other Party and any other country, including in both cases transportation on an inter-line or intra-line basis.



If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 2 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Parties shall cooperate in securing information necessary for a resolution of the issue.

5. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such agreement, the previously existing un-disputed tariff shall remain in effect.

ARTICLE XIII USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of each party on the Airlines of the other Party shall be just, reasonable, not unjustly discriminatory, equitably apportioned among categories of users and based upon sound economic principles as set forth in paragraph 2 of this Article. In any event, any such user charges shall be assessed on the Airlines of the other Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.
2. User charges imposed on the Airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, environmental, air navigation,



and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs (1) and (2) of this Article. Each Party shall encourage the competent charging authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their view, and have their views taken into account, before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article XVI, to be in breach of a provision of this Article, unless (1) it fails to undertake review of the charge of practice that is the subject of complaint by the other Party within a reasonable amount of time; or (2) following such a review it fails to take all steps within its power to remedy and charge or practice that is inconsistent with this Article.



ARTICLE XIV TRANSFER OF EARNINGS

1. Each designated airline shall have the right to transfer in convertible currency, the excess of receipt over expenditure earned by the Airlines in its territory in connection with the carriage of passenger, baggage, mail and cargo, subject to the prevailing foreign exchange regulations in the territory of each Party.
2. Whenever the payment system between the Parties is governed by a special Agreement that Agreement shall apply in place of the provisions of this Article.

ARTICLE XV CONSULTATIONS

1. In the spirit of close co-operation, the Parties shall consult each other from time to time with a view to ensuring the effective implementation of this Agreement when necessary to provide for modification thereof.
2. The Parties shall request consultation, which may be through discussion or by correspondence and which shall begin within a period of thirty (30) days of the date of the request, unless the Parties agree to an extension of this period.



ARTICLE XVI SETTLEMENT OF DISPUTES

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement, they shall in the first place endeavour to settle such dispute by negotiation after requesting for consultations as provided in Article XV
2. If the Parties fail to reach a settlement by negotiation within 21 days, they may agree to refer the dispute to some person or body, if they do not so agree, the dispute shall, at the request of either of them, be referred for decision to an arbitral tribunal composed in accordance with Article XVII of this Agreement.
3. The Parties agree that the decision of such arbitral tribunal or other person or body and any provisional measures indicated by it pending its final decision, shall be binding on the Parties to such dispute.

ARTICLE XVII ARBITRATION

Arbitration shall be by a tribunal of three arbitrators who shall be constituted as follows:

- a. Within 30 days of the receipt of a request for arbitration, each Party shall name an arbitrator. Within 60 days of the naming of the second



arbitrator, the two arbitrators shall by Agreement appoint an arbitrator, who shall act as President of the tribunal.

- b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with paragraph (a) of this article, either Party may request the President of ICAO to appoint the necessary arbitrator or arbitrators within 30 days.
- c. Except as hereinafter provided or as otherwise agreed by the Parties, the tribunal shall determine the limits of its jurisdiction and shall establish its own procedural rules.
- d. The tribunal, once formed, may recommend interim relief measures pending its final determination.
- e. At the direction of the tribunal or at the request of either of the Parties, a meeting to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
- f. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is duly constituted. Each Party may submit replies within 60 days of submission of the memorandum of the other Party. The tribunal may hold a hearing at the request of either Party or on its own initiative within 15 days after replies are due.



- g. The tribunal shall attempt to render a written decision within 30 days of completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by majority vote.
- h. The Parties concerned may submit request for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.
- i. Each Party shall meet the cost of remuneration and the expenses of its arbitrator. The remuneration and the expenses of the third arbitrator and the expenses of the tribunal, the nature and limits of which shall be agreed before hand by the Parties, shall be shared equally between and shall be met by the Parties. Any question concerning the division of costs shall be determined by the arbitral tribunal.
- j. The Award of the tribunal shall be final and shall be complied with within the period established therein.
- k. If a Party does not comply with the Award, the other Party may adopt measures restricting the operation of the Airlines of the Party in question or other measures aimed at achieving compliance.



ARTICLE XVIII
SUBMISSION OF STATISTICS

The Aeronautical Authorities of one Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operations of the designated Airline of the first Contracting party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

ARTICLE XIX
EFFECT OF MULTILATERAL AIR TRANSPORT AGREEMENTS

This Agreement shall be deemed to have been amended by the provisions of any multilateral air transport agreement, which may become binding on both Parties.

ARTICLE XX
REGISTRATION OF AGREEMENTS

This Agreement, any amendments thereto, and any Exchange of Notes relating to the Agreement shall be registered with the International Civil Aviation Organisation (ICAO) by the State where the signature of the agreement takes place.



ARTICLE XXI AMENDMENT

1. If either of the Parties considers it desirable to amend any provision of this Agreement, such amendment shall be agreed upon in accordance with the provisions of Article XV and shall be effected by an Exchange of Notes and will come into effect on a date to be determined by the Parties, which date shall be dependent upon the completion of the relevant constitutional requirements.
2. Notwithstanding the provisions of paragraph (1), amendments to the Annex to this Agreement may be agreed to directly between the Aeronautical Authorities of the Parties. Such amendments shall apply from the date they have been agreed upon and enter into force when confirmed through the diplomatic channel.

ARTICLE XXII RATIFICATION

1. This Agreement shall be subject to ratification.
2. The instruments of ratification shall be deposited with the International Civil Aviation Organisation (ICAO).



ARTICLE XXIII TERMINATION

1. Either Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation (ICAO).
2. The Agreement shall terminate at the end of a period of twelve (12) months after the date of receipt of the notice, unless the Notice is withdrawn by mutual agreement before the expiry of the period.
3. In default of acknowledgement of receipt of the notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

ARTICLE XXIV ENTRY INTO FORCE

1. This Agreement shall enter into force provisionally between the Parties immediately upon signature.
2. Notwithstanding paragraph (1) above, this Agreement shall enter into force on the date of the last notification by either Party in writing through diplomatic channels of the completion of constitutional requirements necessary for the implementation of this Agreement.




IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement in two originals in the English Language.

Done at NAIROBI on this 13th day of December Two Thousand and Fourteen.

**FOR THE GOVERNMENT OF
THE REPUBLIC KENYA**

**FOR THE GOVERNMENT OF
THE REPUBLIC GHANA**


.....
**ENG. M. S. M. KAMAU, CBS
CABINET SECRETARY FOR TRANSPORT
AND INFRASTRUCTURE**


.....
**HON. DZIFA AKU ATTIVOR
MINISTER FOR TRANSPORT**



ANNEX 1

ROUTE SCHEDULE TO THE BILATERAL AIR SERVICES AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE REPUBLIC OF GHANA

1. Routes to be operated by the Designated Airlines of the Republic of Kenya

Points of Departure	Intermediate Point(s)	Point(s) in Ghana	Point(s) Beyond
Any Point	Any Point Within Africa	Any Point	Any Point Within Africa

Aircraft Type : Any
Frequency : Unlimited
Traffic Rights : (i) 5th Freedom within Africa
(ii) Any points outside Africa subject to the approval of the Aeronautical Authorities of the other Party.

2. Routes to be operated by the Designated Airlines of the Republic of Ghana

Points of Departure	Intermediate Point(s)	Point(s) in Kenya	Point(s) Beyond
Any Point	Any Point Within Africa	Any Point	Any Point Within Africa

Aircraft Type : Any
Frequency : Unlimited
Traffic Rights : (i) 5th Freedom within Africa
(ii) Any points outside Africa subject to the approval of the Aeronautical Authorities of the other Party.



NORTHERN CORRIDOR INTEGRATION PROJECTS

Standard Gauge Railway Protocol



Nairobi, Kenya

May 2014



STANDARD GAUGE RAILWAY PROTOCOL

A PROTOCOL ON DEVELOPMENT AND OPERATION OF THE STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK OF THE NORTHERN CORRIDOR INTERGRATION PROJECTS

PREAMBLE

WHEREAS the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda (hereinafter referred to as "the Parties");

HAVING REGARD to the Tripartite Agreement on the creation of the Standard Gauge Railway to address infrastructure development, energy, trade facilitation and regional integration within their countries;

AND WHEREAS the Parties undertook to conclude such protocols as may be necessary in such areas of cooperation, to expedite and facilitate effective implementation;

RECALLING the decision of the 1st Joint Communiqué to undertake the development of the Standard Gauge Railway as a regional project;

RECALLING the decision of the 3rd Joint Communiqué to develop a Standard Gauge Railway Protocol;

CONSIDERING that the objective of development of the Standard Gauge Railway network is to enhance transport infrastructure, trade and regional integration;

NOTING the advantages of cooperation and coordination in the joint development of infrastructure projects to ensure social economic development;

AWARE of their individual obligations and commitments under other regional and international agreements;

The Parties hereby agree as follows:



PART A

INTERPRETATION

Article 1: Interpretation

In this Protocol, except where the context otherwise requires:

- a) "Agreement" means the Tripartite Agreement for the development and operation of the Standard Gauge Railway and any annexes thereto.
- b) "Cooperation" includes the undertaking by the Parties in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Standard Gauge Railway as provided under the Tripartite Agreement.
- c) "Parties" means the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan and the Republic of Uganda.
- d) "Protocol" means this Protocol.
- e) "SGR" means Standard Gauge Railway.
- f) "Summit" means the meeting of the Heads of State of the Northern Corridor Integration Projects.
- g) "Northern Corridor" means the transport corridor linking the Great Lakes countries of Burundi, the Democratic Republic of Congo, Rwanda, South Sudan and Uganda to the Kenyan seaports

PART B

DEVELOPMENT OF THE STANDARD GAUGE RAILWAY

Article 2: Objective of the Protocol

(1) The overall objective of the SGR is to jointly develop and operate a modern, fast, reliable, efficient and high capacity railway transport system as a seamless single railway operation among the Parties with the specific objectives of the SGR project as follows:



- a) Expedite economic growth and development of the Parties by reducing the cost of doing business and increase the region's competitiveness.
- b) Enhance spatial development along the SGR corridor.
- c) Enhance efficient and cost effective movement of freight and passengers in the region to accelerate trade and services.
- d) Sustain development of other transport infrastructure and adopt new technologies to enhance economic development.

Article 3: Scope of the Protocol

(1) The provisions of this Protocol shall apply to any activity undertaken in cooperation by the Parties to achieve the objectives in Article 2.

For purposes of paragraph (1) above, the Parties agree to:

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR.
- b) Adopt a common logical framework of project management.
- c) Adopt agreed common SGR standards.
- d) Cooperate and coordinate human resource capacity building strategies.
- e) Cooperate and coordinate in joint mobilisation of financial resources.
- f) Ensure sufficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund.
- g) Undertake joint implementation of any other matter related to SGR inter-parties.
- h) Undertake joint monitoring and evaluation of projects.
- i) Develop and adopt a common communication strategy.
- j) Cooperate and coordinate Research and Development and transfer of technology.



- k) Develop and adopt mechanisms to ensure seamless operations.

PART C

INSTITUTIONAL FRAMEWORK

The decision making organs of this Protocol shall be the Joint Ministerial Committee, the SGR Commission and the Joint Technical Committee.

Article 4: Joint Ministerial Committee

(1) Membership

The Joint Ministerial Committee shall be composed of Ministers responsible for Transport/infrastructure of the Parties.

(2) Functions of the Committee

- a) The Committee shall be the policy organ of the SGR project.
- b) The Committee shall promote, monitor, review, and implement all programmes and projects for the development and operation of SGR.
- c) Consider progress reports of the Commission and prepare reports for the Summit.
- d) Implement the decisions and directives of the Summit as may be addressed to it.
- e) Exercise such other powers and perform such other functions as are vested in or conferred on it by the Tripartite Agreement.

(3) Meetings of the Committee

- a) The Committee shall meet at least once every two months preceding meetings of the Summit.
- b) The Committee may hold extraordinary meetings as and when necessary or at the request of a Party or the Chairperson of the Committee.



- c) The Committee shall determine its own rules of procedure for convening and conduct of meetings.

Article 5: Standard Gauge Railway Commission

(1) Composition

The SGR Commission shall be composed of the Permanent/Principal Secretaries responsible for Transport and/or Infrastructure, the Secretaries to the Treasury and the Solicitors General or their equivalent.

(2) Functions of the Commission

- a) Shall prepare and submit progress reports and recommendations to the Joint Ministerial Committee on the implementation of the SGR project.
- b) Shall receive and consider reports of the Joint Technical Committee and coordinate its activities.
- c) Shall perform any other functions conferred upon it by the Joint Ministerial Committee.

(3) Meetings of the Commission

- a) Subject to the directives that may be given by the Joint Ministerial Committee, the Commission shall meet at least once every two months before the meetings of the Summit.
- b) The Commission may hold extraordinary meetings at the request of the Chairperson.
- c) The Commission shall determine its own rules of procedure for convening meetings and conduct of business.
- d) The Chief Executives of the railway authorities shall be the secretariat.

Article 6: Joint Technical Committee

(1) Composition

The Joint Technical Committee shall be composed of at least three representatives from each Party.

(2) The Delegation

The delegation of each party may co-opt other technical staff to participate in the meetings as may be necessary.

(3) Functions

Subject to the directives of the Joint Ministerial Committee, the Joint Technical Committee shall:

- a) Be the technical arm of the Commission and be responsible for the preparation of the SGR project implementation programme.
- b) Submit progress reports and recommendations to the Commission on implementation of the SGR project.
- c) Prepare budget and proposals for mobilisation of funds to implement the SGR project.
- d) Develop strategic plans, monitoring and evaluation framework of the SGR project.
- e) Implement the decisions of the Summit and of the Joint Ministerial Committee.
- f) Do such other matters that may be provided for by the Tripartite Agreement and or the Commission.

(4) Meetings

- a) Subject to any directives that may be given by the Joint Ministerial Committee, the Joint Technical Committee shall meet as often as necessary at least twice before the Summit for the proper discharge of its functions.
- b) The Committee shall determine its own rules of procedure including the convening of meetings and conduct of business.



PART D
GENERAL PROVISIONS

Article 7: Implementation of this Protocol

(1) The Parties undertake to approximate and/or harmonize their national laws, policies and systems to facilitate implementation of this Protocol.

(2) The provisions of this Protocol shall not affect the rights and obligations of the Parties relating to other international agreements.

(3) The Joint Ministerial Committee shall establish a monitoring and evaluation framework for this Protocol. For purposes of this Article, the Joint Ministerial Committee shall:

- a) ensure regular evaluation of implementation of this Protocol;
- b) regularly assess progress and causes of delays and take appropriate remedial measures; and
- c) give progress reports to the Summit.

(4) The Joint Ministerial Committee shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of the provisions of this Protocol.

(5) The Joint Ministerial Committee shall issue directives for purposes of implementing this Article.

Article 8: Amendments of the Protocol

This Protocol may be amended by the Parties on approval by the Summit.

Article 9: Dispute Settlement

(1) Any dispute between the Parties on interpretation or application of this Protocol shall be resolved amicably by the Parties.

(2) The Parties guarantee that:



- a) The competent judicial, administrative or legislative authority or any other competent authority, shall rule on the rights of a person who is seeking redress.
- b) The Parties agree that where a third party is aggrieved as result of the application of this Protocol, the party will have recourse to the existing national laws.

Article 10: Accession

- (1) Any party interested in joining this Protocol shall apply to the Summit and, on approval, will deposit an instrument of accession with the Parties.

Article 11: Entry into Force

- (1) This Protocol shall come into force after execution and ratification/accession by the Parties.
- (2) Any Party which ratifies or accedes to this Protocol shall be deemed to be party to the Protocol.

Article 12: Denunciation of the Protocol

- (1) Any Party may denounce this Protocol by notification addressed to the Joint Ministerial Committee.
- (2) Denunciation shall take effect six months after receipt of the said notification by the Joint Ministerial Committee.

Article 13: Signature of the Protocol

The Protocol shall be signed in multiple copies and shall be deposited with the Parties.

DONE at Nairobi, Kenya on the day of 20 14.

Four handwritten signatures in blue ink are located at the bottom of the page. From left to right, they consist of a long horizontal stroke with a loop underneath, a vertical stroke with a loop, a circular mark with a cross inside, and a circular mark with a cross inside.

IN WITNESS WHEREOF the undersigned have appended their signatures hereto:

FOR THE REPUBLIC OF KENYA



**ENG. MICHAEL M. KAMAU, EBS
CABINET SECRETARY, MINISTRY OF
TRANSPORT AND INFRASTRUCTURE**

FOR THE REPUBLIC OF RWANDA



**HON. PROF. SILAS LWAKAKAMBA,
MINISTER OF INFRASTRUCTURE**

FOR THE REPUBLIC OF UGANDA



**HON. ENG. JOHN BYABAGAMBI
MINISTER OF STATE FOR WORKS AND
TRANSPORT (WORKS) UGANDA**

FOR THE REPUBLIC OF SOUTH SUDAN



**HON. KOUG DANHIER GATLUAK
MINISTER FOR TRANSPORT ROADS &
BRIDGES**



REPUBLIC OF KENYA

BRIEF

ON

**PROTOCOL ON DEVELOPMENT AND OPERATION OF THE
STANDARD GAUGE RAILWAY WITHIN THE FRAMEWORK
OF THE NORTHERN CORRIDOR INTERGRATION
PROJECTS**

BY

MINISTRY OF TRANSPORT AND INFRASTRUCTURE

FEBRUARY 2015

*Paper used
By the Leader
of majority,
John Duda
Tuesday 10/2/2015*



1.0 BACKGROUND

- 1.1 The existing metre gauge railway is on concession to Rift Valley Railways (RVR) for a period of 25 years for freight operations due to come to an end on 30th June, 2031. The railway design and its current state limit its capacity and delivery speed and it cannot therefore meet the future demand for rail transport in the country and the region.
- 1.2 The Government therefore decided to build a new, modern, high capacity Standard Gauge Railway Line between Mombasa and Malaba with a branch line to Kisumu. The railway will be extended to Kampala (Uganda) and Kigali (Rwanda) as pronounced by the three Heads of State for the Republic of Rwanda, Uganda and Kenya on 28th August 2013 and in line with the signed Protocol and Tripartite Agreement. The line will also be extended to Juba following South Sudan accession to the Tripartite Agreement.
- 1.3 The objectives of developing the Standard Gauge Railway is to reduce the cost of doing business in the region and make the region competitive to investment through:
 - i) Reduced freight transportation tariff charges on average by 41.5% per tonne-kilometre;
 - ii) Reduced Transit time by freight trains on average by 26.6%;
 - iii) Increased rail transport share in the Northern corridor;
 - iv) Reduced damage to the roads on the Northern Corridor.
- 1.4 On 3rd August 2012, the Cabinet approved the development of Mombasa-Kampala Standard Gauge Railway with a branch to Kisumu through a Government -to- Government arrangement.
- 1.5 So far, Kenya Railways and China Road & Bridge Corporation (CRBC) have undertaken the Feasibility Study and Preliminary design of Phase 1 (Mombasa to Nairobi section – 485 km) defining the technical parameters

of the civil works, signaling and communication, operating plan as well as operating equipment requirement (locomotives and rolling stock).

- 1.6 Kenya Railways Corporation and China Road & Bridge Corporation (CRBC) signed Commercial Contracts for undertaking Civil Works and for providing Facilities, Locomotives and Rolling Stock on 11th July, 2012 and 4th October, 2012 respectively for Mombasa – Nairobi Section.
- 1.7 As a result, Government of Kenya and EXIM Bank of the Government of the Peoples Republic of China signed Memorandum of Understanding (MOU) on 19th August 2013 and Loan Agreement on 11th May 2014. The construction work has since commenced with a target completion date of October 2017.
- 1.8 The Government has also created a Railway Development Fund supported by a 1.5% levy on the cost of all imports to support the railway development.
- 1.9 To enable development and operationalisation of a Seamless Railway network from Mombasa to Kigali and Juba, the Summit of the Northern Corridor Integration Projects vide the 3rd Joint Communiqué directed the Partner States to develop a Standard Gauge Railway Protocol for the development and operations of the Standard Gauge Railways. The Protocol was signed by Kenya, Uganda, South Sudan and Rwanda in May 2014 and is expected to be ratified before next Summit in February/March 2015.
- 1.10 In order to comply with the Treaty Making and Ratification Act, on public consultations, the Corporation uploaded a copy of the protocol on its website and further caused an advert in the print media in form of a Public Notice to appear on Friday 19th September 2014 and by the expiry of the notice period on 26th September 2014, the Corporation received eleven emails but none of the emails objected to the protocol.

- 1.11 As a result, the Cabinet during its meeting of 15th January 2015 approved the ratification of the Protocol on Development and Operation of the Standard Gauge Railway. The Ministry of Transport and Infrastructure was therefore directed to submit the Protocol to Parliament for ratification.

2.0 OBJECTS AND SUBJECT MATTER OF THE PROTOCOL

The overall objective is to jointly develop and operate a modern, fast, reliable, efficient and high capacity railway transport system as a seamless single railway operation among the Parties with the specific objectives of:

- a) Expediting economic growth and development of the Parties by reducing the cost of doing business and increase the region's competitiveness;
- b) Enhancing spatial development along the SGR corridor;
- c) Enhancing efficient and cost effective movement of freight and passengers in the region to accelerate trade and services; and
- d) Sustaining development of other transport infrastructure and adopt new technologies to enhance economic development.

3.0 CONSTITUTIONAL IMPLICATIONS

- 3.1 The Standard Gauge Railway Protocol does not propose any amendment to the Constitution of Kenya 2010. The Protocol is in line with the principles of the Constitution of Kenya, 2010 and specifically recognizes the principles for the respect of sovereignty, equality, territorial integrity, political independence, good neighborliness (cooperation), interdependence, non-aggression and non-interference in the internal affairs of each Contracting State.

3.2 The implementation of the Protocol will promote constitutional values and objectives through expediting economic growth and development of the country by reducing the cost of doing business and increasing the country's competitiveness which will result in improved welfare of the people of the Republic of Kenya.

4.0 IMPACT OF THE RATIFICATION OF THE PROTOCOL

Harmonisation of the policy, legal and institutional framework for SGR will enhance seamless flow of freight in the region. National trade facilitation and regional interests in this regard are also in effect safeguarded.

5.0 OBLIGATIONS IMPOSED ON KENYA/ REQUIREMENTS FOR THE IMPLEMENTATION OF THE PROTOCOL AND POLICY AND LEGISLATIVE CONSIDERATIONS

5.1 The Government of Kenya entered into an agreement with the Governments of Rwanda, South Sudan and Uganda to build a Standard Gauge Railway connecting the Port of Mombasa to Kampala in Uganda and Kigali in Rwanda and Juba in South Sudan and this will be implemented through the operationalisation of the signed Protocol.

5.2 Following ratification by the Cabinet, the Parliament will therefore need to ratify the Protocol before the next Summit to enable its implementation and facilitate mobilization of resources and development of the remaining railway sections in a manner that will create seamless network.

5.3 To develop the Seamless Railway network as envisaged through the Protocol for the development and Operation of the Standard Gauge Railway, the Kenya will be expected to:

- a) Ensure the harmonisation of the policy, legal and institutional framework for SGR;

- b) Adopt a common logical framework of project management;
- c) Adopt agreed common SGR standards;
- d) Cooperate and co-ordinate human resource capacity building strategies;
- e) Cooperate and coordinate in joint mobilisation of financial resources;
- f) Ensure sufficient budgetary allocations and funding mechanisms including exploring the establishment of a Railway Development Fund;
- g) Undertake joint implementation of any other matter related to SGR inter-parties;
- h) Undertake joint monitoring and evaluation of SGR projects;
- i) Cooperate and coordinate Research and Development and transfer of technology; and
- j) Develop and adopt mechanisms to ensure seamless operations.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The major financial implications relate to the cost of borrowing, construction, purchase of rolling stock/equipment and compulsory land acquisition for the development of the Nairobi-Malaba/Kisumu Section which will be determined through the engineering studies.
- 6.2 The operating costs for operationalisation of the Protocol are minimal and will be met through the day to day budgetary allocation.

6.3 Public funds will be utilized in the implementation of the Protocol as relating to the development of the entire seamless railway network from Mombasa to Malaba/Kisumu.

7.0 MINISTERIAL RESPONSIBILITY

The responsibility for the implementation of the Protocol shall be by the Cabinet Secretary, Ministry of Transport and Infrastructure

8.0 IMPLICATIONS ON MATTERS RELATING TO COUNTIES

The SGR protocol does not have any implication on matters relating to the counties.

9.0 REQUEST TO THE MEMBERS OF PARLIAMENT

The Members of Parliament are requested to consider and ratify the Protocol for the Development and Management of the Mombasa-Malaba/Kisumu- Kampala/Juba/Kigali Standard Gauge Railway to enable its implementation.

Signed by

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**ENG. M. S. M. KAMAU, CBS
CABINET SECRETARY
MINISTRY OF TRANSPORT AND INFRASTRUCTURE**

Date.....

